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THE LEGAL STATUS OF AMERICAN POLITICAL PARTIES, I

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The legal status of political parties in the United States is far from being clearly defined. On the one hand, we do not have a mass of legislation and court decisions clearly constituting the political party as a branch of the government, as in the leading fascist countries of Europe;[1] and, on the other hand, we do not have a situation similar to that of Great Britain or France, where political parties are practically unregulated except for laws designed to control subversive groups.[2] To gain a concept of the legal position of American political parties, a great deal of legislation which differs widely in many particulars among the forty-eight states must be surveyed, and certain categories of common and public law must be explored. Even when the many branches of the law that seem to impinge upon the subject have been brought into view, the legal position of our political parties still seems elusive and indefinite. Yet the subject is one of considerable practical importance, since the near future is likely to bring insistent demands for new and more drastic regulation of political parties. A consideration of the rights of American political parties, and the scope of the powers of the legislature to interfere with parties in the public interest, therefore seems appropriate at the present time.

The constitution of the United States makes no mention, direct or indirect, of political parties. On the contrary, the terms of the

[1] See H. A. Steiner, "The Constitutional Position of the *Partito Nazionale Fascista*," in this REVIEW, Vol. 31, pp. 227–242 (April, 1937), and A. B. Boerner, "The Position of the NSDAP in the German Constitutional Order," *ibid.*, Vol. 32, pp. 1059–1081 (December, 1938).

[2] See K. Loewenstein, "Militant Democracy and Fundamental Rights," *ibid.*, Vol. 31, pp. 417–432, 638–658 (June, August, 1937).

federal constitution as well as of the early state constitutions show clearly that the founders of our system had no expectation that political parties would arise. The federal constitution clearly assumes the principle of national representation.[3] Its drafters expressed the representative principle in terms of the direct choice of delegates by the people, and it is plain that they did not contemplate organizations such as political parties intervening between the people and their representatives. Moreover, the antipathy of the Founding Fathers to the type of political organization existent at the end of the eighteenth century, which they called faction, is well known, and it is therefore not surprising that they omitted mention of political parties in the constitutional documents that they drafted.[4] The omission of political parties from some of the earliest constitutions has, it seems, been adopted as a standard by later constitution-makers the world over.[5] In spite of the fact that political parties have long been, almost everywhere, important agencies in the organization of public opinion and in the direction of public administration, it is to this day unusual to find any direct provision for such parties in a written constitution.[6]

No one of the forty-eight state constitutions contains a forthright authorization of political parties, but the words "political party" or "party" appear one or more times in the constitutions of seventeen states,[7] and the word "convention," obviously meaning a

[3] Constitution of the United States of America, Art. I, Sec. 2; cf. W. W. Willoughby and L. Rogers, *Introduction to the Problem of Government* (New York, 1921), pp. 132, 145–148.

[4] On the early distrust of political parties, see A. C. McLaughlin, *The Courts, the Constitution, and Parties* (Chicago, 1912), pp. 112–113, 116, 152–153.

[5] See remarks on this habit of constitution-makers in W. B. Munro, *The Governments of Europe* (1st ed., New York, 1925), p. 648. There are, of course, excellent arguments against the establishment of political parties on a constitutional basis, a good statement of which may be found in W. MacDonald, *A New Constitution for a New America* (New York, 1921), pp. 140–141.

[6] Article 124 of the constitution of the German Republic, adopted August 11, 1919, came about as close to an open recognition of political parties as any democratic constitution. The constitution of the Soviet Union, adopted on December 5, 1936, is unique in that it establishes the Communist party in a privileged position. In Articles 126 and 141, it states that the Communist party is "the vanguard of the workers in their struggle to strengthen and develop the Socialist system" and "the leading nucleus of all organizations of the workers," and it grants the right to nominate candidates to only one political party—the Communist.

[7] Alabama, California, Georgia, Louisiana, Maryland, Mississippi, Nebraska, New Mexico, New York, Nevada, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Virginia, and Utah.

convention of a political party, appears in one other constitution.[8] These same state constitutions contain provisions of considerable variety relating to political parties—provisions which fall generally into two classes, i.e., those granting a right or a power to political parties, and those designed in one way or another to protect political parties in the exercise of their functions.

Foremost among the constitutional provisions granting powers to party organizations stands the recently adopted amendment to the constitution of Maryland which, in practical effect, authorizes the state central committees of the political parties to appoint persons to fill vacancies in the legislature.[9] The only other constitutional provision authorizing party organizations to function directly in filling public offices is the passage in the constitution of New York relating to registration and election boards.[10] Another striking provision is that of the constitution of Louisiana authorizing parties to prescribe the qualifications of persons for voting in primary elections.[11] A number of constitutional passages directly or indirectly authorize parties to nominate candidates for election to public office. Thus, the constitution of Oklahoma authorizes parties to nominate candidates for the supreme court.[12] The mandate to the legislature to enact a direct primary law, found in the constitutions of six states,[13] may be regarded as constitutional recognition of the right of political parties to nominate candidates; so also with the authorization of laws relative to nominations by party conventions,[14] defining conditions for participation in direct primaries by voters and political parties,[15] and providing for proportional representation in the direct primary.[16] In the same category, as granting a power to political parties, one may note the passage in the consti-

[8] Constitution of Delaware (1897), Art. V, Sec. 7.

[9] Constitution of Maryland (amendment adopted 1936), Art. III, Sec. 13.

[10] Constitution of New York (1938), Art. II, Sec. 8.

[11] Constitution of Louisiana (1921), Art. VIII, Sec. 4.

[12] Constitution of Oklahoma (1907), Art. VII, Sec. 3.

[13] Constitutions of: California (amendment adopted 1900), Art. II, Sec. 2½; Louisiana (1921), Art. VIII, Sec. 4; Mississippi (1890), Art. XII, Sec. 247; Ohio (amendment adopted 1912), Art. V, Sec. 7, which also relates to the presidential preference primary; Oklahoma (1907), Art. III, Sec. 5; South Carolina (1895), Art. II, Sec. 10.

[14] Constitution of California (amendment adopted 1900), Art. II, Sec. 2½.

[15] *Ibid.*

[16] Constitution of Oregon (amendment adopted 1908), Art. II, Sec. 16. It appears that no legislation was ever passed to implement this provision.

tution of New York authorizing parties to provide for the equal representation of the sexes on party committees.[17]

The commonest provisions for the protection of political parties are those requiring election boards to be bipartisan in make-up, found in five state constitutions,[18] and the same for registration boards, found in two state constitutions.[19] Three states protect political parties by requiring that the qualifications of a voter shall be possessed by a participant in a primary election,[20] and by delegates to party conventions.[21] Persons appointed to fill out the unexpired terms of members of the legislature must be of the same political party as the late member in two states.[22] In Louisiana, political parties are assured of unmistakable designation of their candidates on the general election ballot by party emblems, together with provisions for voting a straight party ticket;[23] while just the opposite, that is, the prohibition of party designation on the ballots, is found in Nebraska for members of the legislature,[24] and in Utah for members of city charter commissions.[25] A miscellaneous provision relating to political parties in the constitution of Louisiana has the practical effect of dispensing with local elections as respects those offices for which no one comes forward to oppose the Democratic nominee.[26]

The mere mention of political parties in the state constitution, or any one of the incidental references to political parties as found in a number of state constitutions, is probably sufficient to establish them on a firm footing in constitutional law, and to give them a

[17] Constitution of New York (1938), Art. XIII, Sec. 1.

[18] Constitutions of: New Mexico (1911), Art. VII, Sec. 1; New York (1938), Art. II, Sec. 8; Oklahoma (1907), Art. III, Sec. 4; Pennsylvania (1873), Art. VIII, Sec. 16; Virginia (1902), Art. II, Sec. 31.

[19] Constitutions of: New Mexico (1911), Art. VII, Sec. 1; New York (1938), Art. II, Sec. 8. While commonly nominated by party committees, the members of registration boards (and, we may presume, the members of election boards also) are state officers, and not the agents of the political parties or the municipality. See Board of Registration Commissioners v. Campbell (1933), 251 Ky. 597, 65 S.W. (2nd) 713.

[20] Constitutions of: Alabama (1901), Art. VIII, Sec. 183; Georgia (1877), Art. II, Sec. 1, Paragraph 8; Louisiana (1921), Art. VIII, Sec. 4.

[21] Constitution of Louisiana (1921), Art. VIII, Sec. 4.

[22] Constitutions of: Maryland (amendment adopted 1936), Art. III, Sec. 13; Nevada (1922), Art. IV, Sec. 63.

[23] Constitution of Louisiana (1921), Art. VIII, Sec. 15.

[24] Constitution of Nebraska (amendment adopted 1934), Art. III, Sec. 7.

[25] Constitution of Utah (1895), Art. XI, Sec. 5.

[26] Constitution of Louisiana (amendment adopted 1934), Art. VIII, Sec. 15.

constitutional right to exist. The courts have seldom been called upon to interpret constitutional passages of this nature, and there appears to be only one decision of a state supreme court extant holding that the mention of the term "political party" in the constitution is enough to grant recognition. In 1912, the Oklahoma supreme court said that a constitutional provision making it mandatory for the legislature to provide for the creation of election boards, not more than a majority of whose members should be selected from the same political party, amounted to "a constitutional recognition of political party organization."[27]

Quite apart from the mention of political parties in the constitution, there are in the constitution of any free people a number of guaranties which, in the first place, make possible the existence of political parties and, in the second place, sanction those activities of discussion, publication, and assembly so essential to the efficient operation of parties. The constitutional guaranties that are of significance in connection with political parties fall into the classification of public rights, as distinguished from private rights. The most important of these, although not recognized in our constitutions, is the right of association. In this country, as in others having the Anglo-Saxon legal heritage, the right of association is not established on a constitutional plane. Moreover, we do not have any general law of associations of statutory grade, as is common in the countries of Continental Europe.[28] We have, however, in the common law and custom the fullest possible recognition of the right of association.[29] Speaking generally, the American people may freely associate themselves together in any kind of organization or society, provided always that the object of the association is not to

[27] *Ex parte* Wilson (1912), 7 Okla. Crim. Rep. 610, at p. 620, 125 Pac. 739, at p. 744.

[28] This contrast between Anglo-Saxon and Continental law seems plainer to the English authorities than to the American. See H. A. Smith, *The Law of Associations, Corporate and Unincorporate* (Oxford, 1914), p. 1; E. Jenks, *The Book of English Law* (Boston and New York, 1929), pp. 180–181. Associations, other than corporations, do not as a rule depend upon statutory provisions, but are formed by the voluntary association of individuals under the common-law right of contract. See 5 Corp. Jur. 1335–1336.

[29] "It must now be considered as well settled that persons have a right to enter into such [i.e., benevolent and social] associations, and to bind themselves as to their membership and rights in such societies, and the funds of the same, by the constitution and by-laws of the association which they adopt, or subscribe to after adoption." Brown v. Stoerkel and Gregory (1889), 74 Mich. 269, at p. 276, 41 N.W. 921, at p. 923.

break the law. Even secret and oath-bound societies have been allowed to exist freely,[30] and have sometimes taken a political character.[31] Such a right of association is broad enough to cover political parties—even those with revolutionary objects—along with all other sorts of organizations, such as religious bodies, trade and professional societies, philanthropic, scientific, literary, and cultural societies, recreational and athletic clubs, and so on.

We have judicial authority to the effect that the constitutional basis of political parties is found in the right of peaceable assembly and the right of petition as guaranteed in both the federal and state constitutions,[32] and in the right of the people to instruct their representatives.[33] It would appear that the right of free speech and the freedom of the press, as well as the right to use the streets for purposes of peaceful demonstrations, are also involved; for without these guaranties a political party would be prevented from carrying on many activities incidental to political agitation.

The usual judicial interpretation is that the right to form political parties is part of the right to vote. The Wisconsin supreme court has said:

> The right of suffrage includes the right of voters to separate into groups according to their political beliefs respecting governmental policies, and the right of every group to organize and have all the machinery in that regard not reasonably prohibited by law for making the organization effective as regards declaring the policy of its members, and vitalizing such policies by electing officers in harmony therewith to legislate and execute law to that end.[34]

[30] See the dissenting opinion of Davis, J., in People *ex rel.* Bryant v. Zimmerman (1925), 213 N. Y. App. 414, at p. 424 seq. A state legislature may, however, apply to associations having an oath-bound membership such reasonable regulations as are calculated to confine their activities within limits which are consistent with the rights of others and the public welfare. See Same v. Same (1928), 278 U. S. 63. Secret political organizations are illegal in North Carolina. See constitution of North Carolina (1868), Art. I, Sec. 25, and *Code* (Michie), 1935, Sec. 4180.

[31] American history contains such well-known examples as the Know-Nothing party, the Ku Klux Klan, and the Molly Maguires. Since 1933, an organization known as the United Units, which was at first a secret organization, has played a large part in the local politics of the Iron Range area of Minnesota.

[32] Bell v. Hill (1934), 123 Tex. 531, 74 S.W. (2nd) 113. The holding of political conventions comes under the right of public meeting. In Britton v. Board of Election Commissioners of San Francisco (1900), 129 Cal. 337, at p. 342, 61 Pac. 1115, at p. 1117, the court said: "Political conventions are, after all, but public assemblages of the people, having for their end the discussion of ways and means for the public good." [33] Riter v. Douglas (1910), 32 Nev. 400, 109 Pac. 444.

[34] State *ex rel.* McGrael v. Phelps (1910), 144 Wis. 1, at pp. 5, 33, 128 N. W. 1041, at p. 1054. See also *Ex parte* Wilson (1912), 7 Okla. Crim. Rep. 610, 125 Pac. 739.

To connect political organization only with a supposed right of suffrage places political parties on a rather shaky foundation. The fact is that there is no such thing as a *right* to vote, but, in view of the many legal restrictions that may be placed upon voting, the suffrage is a mere political privilege.[35] In a free country, political parties should not be too closely linked with voting, because of the danger of opening a way to undesirable legislative interference with political organization.

Without attempting to pin the matter to any particular constitutional guaranty, judges seem willing to hold that the people have an inherent right to organize political parties.[36] The right is held to exist naturally as an incident to free government. It may be impossible to justify this doctrine on a strictly legal basis; but at any rate it is philosophically sound. The practices of dictatorial government in present-day Europe reveal beyond the shadow of a doubt that the prohibition of opposition parties and the restriction of political organization to a single favored group are completely inimical to popular participation in government. Parties are necessary to facilitate the expression of opinion and to provide a means of enforcing the responsibility of public officers. A nation interested in preserving its freedom will take care to preserve the right of the people to organize political parties.

Whether the right of political parties to exist depends upon specific mention in the written constitution or is an accompaniment of some constitutional guaranty of liberty, or a combination of constitutional guaranties, or whether it is merely inherent in our free institutions—at all events, the legislature does not have the power to deny to the people the right to organize political parties.[37] There

[35] Riter v. Douglas (1910), 32 Nev. 400, 109 Pac. 444.

[36] In Britton v. Board of Election Commissioners of San Francisco (1900), 129 Cal. 337, at p. 344, 61 Pac. 1115, at p. 1117, it was said: "No expression is needed in the declaration of rights to the effect that electors holding certain political principles in common may freely assemble, organize themselves into a political party and use all legitimate means to carry their principles of government into active operation through the suffrages of their fellows. It is inherent in the very form and substance of our government, and needs no expression in its constitution." See also Phelps v. Piper (1896), 48 Neb. 724, 67 N.W. 755; Davidson v. Hanson (1902), 87 Minn. 211, 91 N.W. 1124; State *ex rel.* Punch v. Kortjohn (1912), 246 Mo. 34, 150 S.W. 1060; State *ex rel.* Mills v. Stewart (1922), 64 Mont. 453; Sarlls v. State *ex rel.* Trimble (1929), 201 Ind. 88, 166 N.E. 270; Craig v. Bond (1932), 160 Okla. 34, 15 Pac. (2nd) 1014.

[37] Britton v. Board of Election Commissioners of San Francisco (1900), 129 Cal. 337, 61 Pac. 1115; Davidson v. Hanson (1902), 87 Minn. 211, 91 N. W. 1124; State *ex rel.* Punch v. Kortjohn (1912), 246 Mo. 34, 150 S.W. 1060; *Ex parte* Wilson

is no evidence that any American legislature has ever attempted, by direct enactment, to prohibit the formation of new political parties, or to abolish existing ones. There have been instances, however, when the legislature has aimed to accomplish that result by indirection. The stringent ballot laws, making it difficult for small and new parties to get a place on the ballots, and the recent enactments barring "un-American" parties from the ballot,[38] are certainly intended to ban, if not all new parties, at least those which represent philosophies not in line with the generally accepted traditions. The criminal syndicalist laws, in so far as they have been interpreted to punish mere membership in the Industrial Workers of the World, the Communist Labor party, and the Communist party, have practically outlawed these organizations.[39]

While an early primary law of the "open" type was held to be destructive of political parties,[40] other common features of the election laws are not regarded as having that effect. There has long been a general agreement of judicial opinion to the effect that a primary law does not take away the right of the people to form political parties.[41] It has also been held that the elimination of party designation on municipal ballots cannot be regarded as an attempt to destroy political parties.[42] Regulatory statutes which seem unduly restrictive of the rights of new political parties have on occasion been so construed by the courts as to preserve the right of the people to associate freely for political purposes.[43]

It is unlikely that American legislatures will alter their tactics in the near future, and make a direct assault upon the right to organize political parties. The issue lies rather in attempted interference by the legislatures with certain of the normal activities of

(1912), 7 Okla. Crim. Rep. 610, 125 Pac. 739; State *ex rel.* Mills v. Stewart (1922), 64 Mont. 453; Sarlls v. State *ex rel.* Trimble (1929), 210 Ind. 88, 166 N.E. 270; Craig v. Bond (1932), 160 Okla. 34, 15 Pac. (2nd) 1014; Bell v. Hill (1934), 123 Tex. 531, 74 S.W. (2nd) 113; State *ex rel.* Ekern v. Dammann (1934), 215 Wis. 394, 254 N.W. 759.

[38] See *infra.*

[39] See J. Lipsig, *Sedition, Criminal Syndicalism, Criminal Anarchy Laws* (New York, American Civil Liberties Union, 1937), p. 5.

[40] Britton v. Board of Election Commissioners of San Francisco (1900), 129 Cal. 337, 61 Pac. 1115.

[41] Hopper v. Stack (1903), 69 N. J. L. 562, 56 A. 1; Riter v. Douglas (1910), 32 Nev. 400, 109 Pac. 444.

[42] Sarlls v. State *ex rel.* Trimble (1929), 201 Ind. 88, 166 N.E. 270.

[43] Schafer v. Whipple (1898), 25 Colo. 400, 55 Pac. 180; Davidson v. Hanson (1902), 87 Minn. 211, 91 N.W. 1124; State *ex rel.* Ekern v. Dammann (1934), 215 Wis. 394, 254 N.W. 749.

parties. There have been many such enactments in the past, most of which have been sanctioned by the courts; and doubtless there will continue to be a good deal of legislation along this line.

The legislature may, if it likes, recognize political parties,[44] and the great mass of regulatory laws that now exist in almost all the states do, in fact, constitute such recognition.[45] The legislature cannot regulate political parties without first recognizing their right to exist. As long as the political party complies with the regulatory statutes, it has the right to continue its activities in its own way. But statutory recognition is in no way essential to the existence of parties. They existed long before the regulatory statutes were passed, and the statutes cannot be viewed as having created them. "Political parties are not creatures of law. They exist independently of statutes . . . ."[46]

If political parties do not depend upon the constitution or the statutes for their existence, but are merely an expression of an inherent right of the people, it must follow that they have certain inherent powers, which belong to them naturally and enable them to carry on their functions. Indeed, there is no doubt at all but that political parties formerly possessed a broad range of inherent powers. Before regulatory statutes became common, parties had, and exercised on the basis of custom, broad powers of managing their own affairs, making and altering their rules, nominating their candidates, and determining their own membership. The legislatures have gradually taken under their control a wide range of party affairs, and when a valid statute has been passed to regulate some party activity, it is clear that that function is no longer carried on as an inherent power of the party. Thus, political parties always had the right to nominate candidates. The many statutes regulating nominations, particularly the direct primary laws,[47] did not

[44] "The primary law, from first to last, teems with recognition of political parties. . . . " Riter v. Douglas (1910), 32 Nev. 400, at p. 418; 109 Pac. 444, at p. 449. The statutory recognition began with the adoption of the Australian ballot laws in 1888 and after. See M. Ostrogorski, *Democracy and the Organization of Political Parties* (New York, 1922; first pub. 1902), Vol. 2, p. 507; C. E. Merriam and Louise Overacker, *Primary Elections* (Chicago, 1928), p. 24.

[45] State *ex rel.* McCarthy v. Moore (1902), 87 Minn. 308, 92 N.W. 4; Hopper v. Stack (1903), 69 N. J. L. 562, 56 A. 1; State *ex rel.* Nebraska State Central Committee v. Wait (1912), 92 Neb. 313, 138 N.W. 159.

[46] Morrow v. Wipf (1908), 22 S.D. 146, at p. 158; 115 N.W. 1121, at p. 1126.

[47] Riter v. Douglas (1910), 32 Nev. 400, 109 Pac. 444; People *ex rel.* Kelly v. Kramer (1928), 328 Ill. 512, 160 N.E. 60; People *ex rel.* Linstrand v. Emerson (1929), 333 Ill. 606, 165 N.E. 217.

confer upon parties the right to nominate candidates. The statutes merely regulate the matter and prescribe procedures which the parties must follow. But the result is to transform what was formerly an inherent power of the political party into a statutory one.

The interesting and important question remains, however, as to whether the political party still has any inherent rights—beyond the basic right to exist—which the legislatures are bound to respect. An examination of the judicial opinions relating to this subject reveals that statutory regulation has not yet occupied the whole field of party activities, and that some of the inherent rights of the parties still survive.

Speaking generally, political parties have the right of self-government. In the absence of statutory regulation, they have the inherent right to manage their own affairs.[48] Moreover, the statutes regulating political parties should be strictly construed so as to preserve party integrity.[49]

First among the inherent powers of political parties was the right to organize by electing officers and committees. Beginning in 1891,[50] the state legislatures have assumed the regulation of party organization, and at the present time a great mass of legislation prescribing the manner of election and the powers of party committees exists in practically all of the states. The constitutionality of this legislation is not doubted.[51] At the same time, omissions in the regulatory statute may give play to the former inherent right to organize. Thus when the Illinois primary law failed to make provision for the filling of vacancies in the state central committee, it was held that a party had inherent power to provide for such contingencies.[52] When the Missouri statute failed to make provision for the choice of senatorial committees in counties having two senatorial districts, it was held that the party could make its own arrangements for the choice of such committees.[53]

Among the inherent powers of party committees was the right

[48] Morrow v. Wipf (1908), 22 S.D. 146, 115 N.W. 1121; Beene v. Waples (1916), 108 Tex. 140, 187 S.W. 191; Ferguson v. Montgomery (1921), 148 Ark. 83, 231 S.W. 30.

[49] Brown v. Costen (1918), 176 N.C. 63, 96 S.E. 659; Love v. Taylor (Texas Court of Civil Appeals, 1928), 8 S.W. (2nd) 795.

[50] Merriam and Overacker, *op. cit.*, p. 35.

[51] State *ex rel.* Kimbrell v. Becker (1922), 291 Mo. 409, 237 S.W. 117; Dastugue v. Cohen (1930), 14 La. App. 475, 131 So. 746.

[52] People *ex rel.* Kelley v. Kramer (1928), 328 Ill. 512, 160 N.E. 60.

[53] State *ex rel.* Kimbrell v. Becker (1922), 291 Mo. 409, 237 S.W. 117.

to judge the elections and qualifications of their own members. As long as there is no statutory regulation of the election of party committees, the courts will not interfere in case of the exclusion or expulsion of a committee member;[54] but when the legislature has prescribed the manner of election, the party committee is deprived of its right to judge the qualifications and elections of its own members.[55] A party committee may fill vacancies in the party's slate of nominees caused by death, withdrawal, or removal from the district, but in doing so it must choose a *bona fide* member of the party as candidate.[56] A party committee may not make a nomination in the first instance; its power is limited to filling vacancies.[57] The power of the party committee to choose the site of a convention appears to be unlimited.[58]

Another inherent power of the political party is to adopt and amend the party constitution, and to make rules or by-laws for its internal government. The legislature may regulate the manner of passing and the effect of party rules,[59] but the statutes seldom go into detail upon this matter. In the absence of legislative enactment, parties have the power to make rules for their internal government,[60] and to interpret and administer the same.[61]

In the nineteenth century, political parties had the inherent right to prescribe the qualifications for admission to membership in their organizations. Legislation on this subject began in the 1880's,[62] and at the present time the statutes of a large majority of the states prescribe tests for party membership in connection with

[54] McKane v. Adams (1890), 123 N. Y. 609, 25 N.E. 1057; Raines v. Stone (1919), 112 S. C. 147, 99 S.E. 353.

[55] People *ex rel.* Coffey v. Democratic General Committee of King's County (1900), 52 N.Y. App. 170, 65 N.Y. Supp. 57; (1900), 164 N.Y. 347, 58 N.E. 124.

[56] Francis v. Sturgill (1915), 163 Ky. 650, 174 S.W. 7539.

[57] Coovert v. Olcott (1916), 81 Ore. 415, 159 Pac. 974; Gilmore v. Waples *et al.* (1916), 108 Tex. 167, 188 S.W. 1037.

[58] Macdonald v. Lyon (Texas Court of Civil Appeals, 1906), 95 S.W. 67.

[59] People *ex rel.* Garvey v. Democratic General Committee of New York County (1903), 39 N.Y. Misc. 724, 81 N.Y. Supp. 784.

[60] Phelps v. Piper (1896), 48 Neb. 724, 67 N.W. 755; Davis v. Hambrick (1900), 109 Ky. 276, 58 S.W. 779; People *ex rel.* Coffey v. Democratic General Committee of King's County (1900), 52 N.Y. App. 170, 65 N.Y. Supp. 57; *Ex parte* Wilson (1912), 7 Okla. Crim. Rep. 610, 125 Pac. 739; State *ex rel.* Mills v. Stewart (1922), 64 Mont. 453.

[61] Beene v. Waples (1916), 108 Tex. 140, 187 S.W. 191; State *ex rel.* Smith v. County Court (1916), 78 W.Va. 168, 88 S.E. 662.

[62] Merriam and Overacker, *op. cit.*, pp. 19–20.

voting in the direct primaries. The power of the legislature to require tests of party membership as part of the qualifications for voting in the direct primary has been approved in many decisions.[63] The legislature may also make reasonable regulations as to the enrollment of party members for purposes of voting in the direct primary.[64] The legislature may not, however, make the giving of information as to party affiliations by new voters a condition for voting in the general election, as this would add to the constitutional qualifications for voting.[65]

Since 1923, when Texas initiated the "white primary" by passing a statute prohibiting Negroes from voting in Democratic primary elections, much attention has been directed to the powers of political parties to prescribe tests for voting in their primaries. It had already been held in Arkansas that the failure of the legislature to provide in the direct primary law any test of party membership allowed the power to prescribe such tests to revert to the parties.[66] The "white primary" cases were complicated by the questions of what is the supreme organ of a political party within a state;[67] but the net result of the decisions of the federal Supreme Court is that

[63] See as examples: Ladd v. Holmes (1901), 40 Ore. 167, 66 Pac. 14; Morrow v. Wipf (1908), 22 S.D. 146, 115 N.W. 1121; State *ex rel.* Webber v. Felton (1908), 77 Ohio St. 554, 84 N.E. 85; Socialist Party v. Uhl (1909), 155 Cal. 776, 103 Pac. 181; Supper v. Stauss (1909), 39 Pa. Super. Ct. 388; Riter v. Douglas (1910), 32 Nev. 400, 109 Pac. 444; *Ex parte* Wilson (1912), 7 Okla. Crim. Rep. 610, 125 Pac. 739; Baer v. Gore (1916), 79 W.Va. 50, 90 S.E. 530; Kelso v. Cook (1916), 184 Ind. 173, 110 N.E. 987; Brown v. Costen (1918), 176 N.C. 63, 96 S.E. 659.

[64] State *ex rel.* Smith and Mellott v. Beggs (1928), 126 Kan. 811, 271 Pac. 400; *In re* Newkirk (1931), N.Y. Misc. 765, 259 N.Y. Supp. 434; Brekhus v. Steele, (1932) 59 S.D. 638, 242 N.W. 353.

[65] State *ex rel.* Smith and Mellott v. Beggs (1928), 126 Kan. 811, 271 Pac. 400.

[66] Ferguson v. Montgomery (1921), 148 Ark. 83, 231 S.W. 30; McLain v. Fish (1923), 159 Ark. 199.

[67] It appears that the courts have not been called upon frequently to rule upon the question of what is the supreme authority of a political party within a state, but the weight of opinion is in favor of saying that it is the state convention. See to that effect: State *ex rel.* Buttz v. Lindahl (1903), 11 N.D. 320, 91 N.W. 950; State *ex rel.* Mills v. Stewart (1922), 64 Mont. 453. In Nixon v. Condon (1932), 286 U.S. 73, it was held that the state central committee is not the supreme authority, and in Grovey v. Townsend (1935), 295 U.S. 45, it is implied that the state convention is the supreme authority. In State *ex rel.* Cook v. Hauser (1904), 122 Wis. 534, 100 N.W. 964, it was held that the supreme authority within the state party is not the national convention, while in State *ex rel.* Nebraska Republican State Central Committee v. Wait (1912), 92 Neb. 313, 138 N.W. 159, it was held that the supreme authority within the state is the national convention or the national committee.

a state legislature may allow the political parties to exercise their inherent power to define their own membership.

The most important inherent right of the political party was to nominate its candidates for public office. The legislatures of almost all of the states have prescribed in such detail the manner of making nominations that the right to nominate has been altered, on the whole, from an inherent right to a statutory one. In fact, the nomination of candidates has been held to be a mere privilege, granted at will by the legislature under appropriate regulations.[68] At the same time, there are two Texas decisions definitely holding that the legislature may not prohibit the making of nominations by any political party, no matter how small.[69] If this is good law, the right to nominate candidates is the sole inherent right of parties which the legislature may not completely take away. But it is well known that the power of the legislature to regulate the making of nominations is broad indeed. The limitation upon legislative power appears to be only that it may not go so far as completely to prohibit the making of nominations; for such an attempt would constitute an arbitrary interference with the liberty of the people to associate themselves together for the purpose of expressing their choice for public officers.

There is the possibility that omissions in the regulatory statute may allow for the reassertion of the former inherent right to nominate candidates. In the absence of constitutional or statutory provisions to the contrary, the authorities of a political party may make and enforce any reasonable rules relating to nominations within the party.[70] As respects offices not covered by the direct primary law, or special elections to fill vacancies, political parties may nominate candidates according to existing usages,[71] but the parties must be careful not to use a method of nomination specifically prohibited by any statute.[72]

[68] Dupre v. St. Jacques (1931), 51 R.I. 189, 153 A. 240.

[69] Gilmore v. Waples *et al.* (1916), 108 Tex. 167, 188 S.W. 1037; Morris v. Mims (Texas Court of Civil Appeals, 1920), 224 S.W. 587.

[70] Beene v. Waples (1916), 108 Tex 140 187 S.W. 191.

[71] State *ex rel.* Reibold v. Duncan (1918), 55 Mont. 380, 177 Pac. 250; State *ex rel.* Burtness v. Hall (1917), 37 N.D. 259, 163 N.W. 1055; People *ex rel.* Stewart v. Crowe (1922), 226 Ill. App. 454; Clary v. Humphrey (1925), 124 N.Y. Misc. 529, 208 N.Y. Supp. 607.

[72] Coovert v. Olcott (1916), 81 Ore. 415, 159 Pac. 974; Gilmore v. Waples *et al.* (1916), 108 Tex. 167, 188 S.W. 1037.

A particularly important question is whether the inherent right to nominate candidates is part of the prerogatives of newly organized political parties. There are a few judicial opinions holding that a new political party, formed or reorganized after the primary election has been held, may proceed to make its nominations by the convention method or other method not inconsistent with the statutes, and may obtain its place on the official general election ballot.[73] It is, however, a well-known fact that the legislatures of some states place numerous obstacles in the way of a new political party wishing to obtain a place on the ballot.

An inherent right to nominate candidates which the legislature is bound to respect is one thing; making that right operative as an effective means of participating in state and national politics is quite another. A mere right of nomination is in itself of little value. It needs to be accompanied by the allotment of a place on the ballot and other facilities to make it possible for the political party to appeal for the suffrages of the people.

The major parties and other parties having a substantial following have no complaints on these scores. Ever since regulatory legislation became general, the large parties have been authorized to nominate their candidates by the most favorable method—that is, the method which gives the greatest confidence that the nominees are really the democratic choice of the rank and file of the party. At the present time, this means the direct primary in most of the states. The state legislatures have for some time followed the practice of prescribing a minimum size for those parties which are authorized to nominate their candidates by the most favorable method. This amounts to a statutory definition of a political party for purposes of participation in the direct primary, or for the nomination of candidates by the convention method, the essential point in the definition in either case being the attainment of a certain voting strength.

At the present time, statutory definitions of political parties, expressed in terms of numerical strength, exist in all but six of the states.[74] The requirements are in all cases expressed in terms of the

[73] Morrissey v. Wait (1912), 92 Neb. 271, 138 N.W. 186; State *ex rel.* Punch v. Kortjohn (1912), 246 Mo. 34, 150 S.W. 1060; Morris v. Mims (Texas Civil Court of Appeals, 1920), 224 S.W. 587; State *ex rel.* Mills v. Stewart (1922), 64 Mont. 453. See *contra*, but a five to four decision: Craig v. Bond (1932), 160 Okla. 34, 15 Pac. (2nd) 1014.

[74] The numerical element in the definitions were as follows before the 1939 out-

vote cast for the party's candidates in the last general election, calculated as a portion of the total vote for governor or some other officer voted for generally throughout the state. In states (with the exception of Kansas) having the mandatory direct primary for which the ballots are prepared under the supervision of public officers and at public expense, all parties having a certain minimum voting strength are required to nominate their candidates in the direct primary. The minimum size for a political party to obtain recognition under the primary act is usually expressed in a percentage of the total vote cast in the last general election, and these percentages now range from one per cent to one quarter of the total vote. In New York and Texas, the requirement is expressed instead in round numbers—50,000 and 100,000, respectively.

In two states having the optional primary (Arkansas and Georgia), and in two states in which the parties hold primaries at their own expense (Mississippi and South Carolina), there is no statutory minimum for participation in the direct primary. Among the three "convention states" which do not prescribe the direct primary in any form, New Mexico has no statutory minimum, while Connecticut requires a political party to have polled one half of one per cent of the vote in the last election, and Rhode Island two per cent, in order to nominate candidates by the convention method and obtain a place on the general election ballot.

Since the statutory minimum for participation in the direct primary is expressed in terms of votes in the last election, a new political party is excluded from choosing its candidates by the most favorable method, unless provisions are made by statute. A few states provide a procedure through which a new party, or a party which for any reason cannot meet the statutory minimum, may qualify for participation in the direct primary. Arizona permits a

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put of legislation became available: Alabama, 20%; Arizona, 5%; Arkansas, none; California, 3%; Colorado, 10%; Connecticut, .5%; Delaware, 10%; Florida, 15%; Georgia, none; Idaho, 10%; Illinois, 5%; Indiana, 10%; Iowa, 2%; Kansas, none; Kentucky, 20%; Louisiana, 5%; Maine, 1%; Maryland, 10%; Massachusetts, 3%; Michigan, 2%; Minnesota, 5%, with some votes in each county; Mississippi, none; Missouri, 3%; Montana, 3%; Nebraska, 5%; Nevada, 5%; New Hampshire, 3%; New Jersey, 10%; New Mexico, none; New York, 50,000; North Carolina, 3%; North Dakota, 5%; Ohio, 10%; Oklahoma, 5%; Oregon, 20%; Pennsylvania, 2%, with not less than 2% in at least 10 counties; Rhode Island, 2%; South Carolina, none; South Dakota, 10%; Tennessee, 10%; Texas, 100,000; Utah, 2%; Vermont, 5%; Virginia, one fourth of the total vote; Washington, 10%; West Virginia, 10%; Wisconsin, 1%; Wyoming, 10%.

group to qualify by filing a petition signed by a number of voters equal to at least two per cent of the votes cast for governor in the last election, provided signatures are obtained in at least five counties.[75] California permits a political party to participate in the direct primary whenever its enrolled registrants equal one per cent of the entire vote cast in the last election, or if a petition signed by voters to the number of at least ten per cent of the entire vote in the last election is filed.[76] Nebraska permits a new political party, organized in a mass convention, to have a separate ballot in the ensuing primary election.[77] In Nevada, a political party may qualify for participation in the direct primary by filing a petition signed by voters to a number of five per cent of the vote cast in the last election for representative in Congress.[78] In Ohio, the petition requirement is fifteen per cent, [79] in South Dakota three per cent,[80] and in Wisconsin one-sixth of the voters in at least ten counties.[81]

The political parties which, by the number of their supporters, qualify under these provisions obtain not only the advantage of choosing their candidates by the method regarded as the most democratic, but also the privilege of having their candidates' names duly inscribed on the official general election ballot, with the allotment of a party column and emblem or other party designation as provided by law.[82] Parties of substantial size thus have their inherent right of nomination fully implemented, and made a reality by the legislative grant of supplementary privileges.

Such statutory provisions, classifying political parties for purposes of making nominations and extending privileges to large parties which are not granted to small parties, have been approved in many judicial decisions.[83] They are not void as denying the equal

[75] Arizona *Rev. Code* (Struckmeyer), 1928, Sec. 1278.

[76] California *Gen. Laws* (Deering), 1937, Act 2256, Sec. 1 (b), (c).

[77] Nebraska *Comp. Stat.*, 1929, Secs. 1135, 1136, 1137.

[78] Nevada *Comp. Laws* (Hillyer), 1929, Secs. 2404 (g), 2405 (2).

[79] Ohio *Gen. Code* (Page), 1938, Sec. 4785–61, and 1932 A. G. Opns. No. 4587.

[80] South Dakota *Comp. Laws.*, 1929, Sec. 7096 (A).

[81] Wisconsin *Stat.*, 1937, Sec. 5.05 (6) (e).

[82] Except, of course, in South Carolina, which has no Australian ballot, and in any state which prohibits the party designation of candidates on the official ballot. It appears that there is now only one state (Virginia) which has no party designations on its ballots. See S. D. Albright, "General Election Ballots in 1934," *Southwestern Social Science Quarterly*, Vol. 16, pp. 85–96 (March, 1936), reprinted as Research Paper No. 422, Journal Series, University of Arkansas.

[83] See in general: Ladd v. Holmes (1901), 40 Ore. 167, 66 Pac. 714; State *ex rel.* Fitz v. Jensen (1902), 86 Minn. 19, 89 N.W. 1126; State *ex rel.* Gulden v. John-

protection of the laws.[84] Small political parties, which do not comprise an appreciable portion of the voters of the state, are not political factors for good or evil, and the legislature may refuse to grant them the privileges or to impose upon them the duties of larger parties.[85] To allow any number of voters, no matter how small, to qualify as a political party and to have a ballot or column in the primary election would open the way to endless confusion.[86] If the state pays the expenses of the primary election, it may reasonably deny a place on the ballot to small political parties.[87] The expense might be considerable to print separate ballots, or separate columns on blanket primary ballots, for all political parties that might desire the publicity.

(*To be concluded in the next issue*)

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son (1902), 87 Minn. 221, 91 N.W. 604, 840; Independence Party Nomination (1904), 208 Pa. 109, 57 A. 344; Matter of Freund (1907), 53 N.Y. Misc. 354, 103 N.Y. Supp. 420; State *ex rel.* Hagendorf v. Blaisdell (1910), 20 N.D. 622, 127 N.W. 720.

[84] Kenneweg v. County Commissioners of Allegany County (1905), 102 Md. 119, 62 A. 249; State *ex rel.* Webber v. Felton (1908), 77 Ohio St. 554, 84 N.E. 85.

[85] State *ex rel.* Merrill v. Gerow (1920), 79 Fla. 804.

[86] State *ex rel.* Adair v. Drexel (1905), 74 Neb. 776, 105 N.W. 174.

[87] State *ex rel.* Rogers v. Howell (1916), 92 Wash. 381, 59 Pac. 118.

THE NATURE OF POLITICAL REPRESENTATION, II

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In the literature of law, there has been comparatively little discussion as to the nature of political representation. A representative democracy has been defined as "a form of government where the powers of the sovereignty are delegated to a body of men, elected from time to time, who exercise them for the benefit of the whole nation." And a representative form of government has been defined as "a government conducted and constituted by the agency of delegates, or deputies, chosen by the people."[26]

Judge Thomas M. Cooley, speaking for the Michigan supreme court, said: "A representative is one chosen by a principal to exercise for him a power or perform for him a trust. In that sense, the mayor of a city is a representative for some purposes, the members of the common council for others, and the members of the board of education for still others . . . the right to be represented implies a right, not merely to name the person, but also to designate the trust that shall be confided to him." On this basis, it was held that a board of park commissioners established by the state legislature with certain powers, and recognized by the common council of the city, could not be vested afterwards by the legislature with additional powers previously exercised by the council.[27]

Somewhat similar is the position of an English judge as to the authority of a representative in a legal proceeding. "A solicitor is the representative of his client, but counsel is not, for counsel has the whole conduct of the case, and can act even against the instructions of his client." It was accordingly held that a solicitor is a representative within S. 17(4) Bankry Act, 1883, and must be "authorized in writing" to entitle him to question a debtor at a public hearing.[28]

In several cases before the supreme court of Nebraska, it has been held that the phrase "a representative form of government,"

[26] 1 Bouvier, Inst. No. 31; 28 *Corpus Juris* (1922) 752; 54 *Corpus Juris* (1931) 685; Lange v. Royal Highlanders, 75 Neb. 188 (1905), 106 N.W. 224; following State v. Bankers' Union of the World, 71 Neb. 620 (1909), 99 N.W. 531.

[27] People v. Common Council of Detroit, 28 Mich. 228, 245 (1873); 15 *American Reports*, 202.

[28] Per Brett, M.R., R. v. Greenwich Co. Registrar, 54 L.J.Q., 392; 15 Q.B.D. 54; 33 W.R. 671. Quoted in F. Stroud, *The Judicial Dictionary* (London, 1903), p. 1724.

in a statute providing for the organization of a fraternal association, required that *all* of the members of the governing body must be elected by the members of the association; and that an association whose constitution provided for the adoption and amendment of its laws by a body including appointed members of a committee, in addition to elected delegates and officers, did not have a representative form of government.[29]

A somewhat different standard is provided by an Indiana statute which requires a supreme governing body of elected representatives or delegates, with other members, provided the elected representatives constitute a majority in number and have not less than a majority of votes. Similar to the Indiana provision is the judicial interpretation of the phrase "representative legislature" for the government of a British possession, which has been held to mean "a legislature comprising a Legislative Body of which at least one half are elected by the inhabitants of the British Possession."[30]

The nature of political representation is involved in some phases of the extensive discussion, in judicial opinions and elsewhere, of the delegation of governmental powers, and more clearly in cases involving the validity of legislative acts providing for a popular vote for their application. The denial of the power of delegation is often related to the maxim of the law of agency that delegated power may not be delegated.

In an analysis of the origin of this maxim and its application to delegated legislation involving the question "whether the legislature can call upon the electorate to aid in the business of lawmaking, after that function has been referred to the legislature by the constitution," a recent article has summarized the position of the American courts in these words:

> (a) that the legislature cannot abdicate or delegate its general legislative power; (b) that it can provide that a statute shall become effective upon the happening of a contingency, the determination of which is left to some other person or body, but in the application of this principle there has been the widest divergence; (c) that the legislature can delegate to others powers not essentially legislative which it might rightfully exercise itself; (d) that the legislature may grant extensive powers of local self-government to municipalities and other established political subdivisions.

Those cases which apply a rule against delegation of legislative power

[29] Briggs v. Royal Highlanders, 84 Neb. 834 (1909), 132 N.W. 69; Meyer v. Supreme Lodge K.P. 104 Neb. 505 (1920), 177 N.W. 828, 180 N.W. 579; Widmer v. Sharp, 111 Neb. 526 (1924); 196 N.W. 918. *Judicial and Statutory Definitions of Words and Phrases.*

[30] F. Stroud, *The Judicial Dictionary* (London, 1903), p. 1724.

base it largely on the language of the constitution in question by which legislative power is vested in the legislative body, or on the proposition that the government is a representative democracy wherein the people have divested themselves of all legislative power and cannot resume it without a change in the fundamental law.[31]

It may be suggested that the cases upholding local option acts imply a recognition of the idea that the local community may decide a question of local application. At the same time, the cases holding invalid provisions for a state-wide popular vote on general acts conflict with the view that the agent always owes the duty of obedience to his principal.[32]

Constitutional provisions authorizing local option votes and state legislation based on the initiative and referendum clearly reflect the view that the decision on such matters is vested in the electorate, and to that extent the authority of the representative legislature is limited.

F. W. Maitland considered that "representation does not neces-

[31] P. W. Duff and Horace E. Whiteside, "Delegata Potestas non Potest Delegari," *Cornell Law Quarterly*, Vol. 14, p. 168 (1929); *Selected Essays on Constitutional Law* (1938), Book IV, *Administrative Law*, pp. 291, 311–312.

[32] Suggested by Holmes, J., in Opinion of the Justices, 160 Mass. (1894) 586, 594, 595; 36 N.E. 488; 23 L.R.A. 113. Cf. People v. Collins, 3 Mich. (1854) 343, in which Green, P. J., said: Legislative power "is not a mere delegation of power to an agent to act for and in the name of the principal, which the principal may exercise concurrently with his agent, and which the agent may at any time surrender into the hands of his principal at his discretion. It is an agency, but it is something more. It is an authority to exercise all that judgment and discretion which the principal might have exercised, without consultation with or in opposition to the will of such principal, and without being subject to any direct control by the granter of the power. It is an incident to inherent legislative power that it may be delegated; that incident adheres to the power in the hands of the legislative department of the government, qualified and limited only by the express provisions of the organic law, and the nature of constitutional organization. . . . The Constitution vests the power of legislation in a select body of men, and there it must remain until the Constitution itself is changed or abrogated. They have no authority to delegate their powers and exclude themselves from the right to their exercise. But it does not follow that they cannot create subordinate bodies with certain powers of legislation. . . . It would seem to be sufficiently clear, then, that it is in the very nature of legislative power, that it may, to some extent at least, be delegated, and that the maxim, delegata potestas non potest delegari, has no application."

Martin, J., admitted "that the legislature cannot delegate its general legislative authority; still, it may authorize many things to be done by others which it might properly do itself."

On this basis Green and Martin held that the statute under consideration, which provided that it should become effective if approved at a popular referendum, was constitutional. Two other judges (Douglas and Pratt) held that this provision was an unconstitutional delegation of legislative power.

sarily imply election by the represented; representatives may be chosen by a public officer or by lot."[33]

In his analysis of Greek political theory, Ernest Barker considered some aspects of representative institutions:

> It is obvious that representative institutions make the way easier for modern democracy. . . . Where there are representative institutions one can unite the democratic principle of rule by the people with the Socratic and Platonic principle of rule by the Wisest and Best.[34] . . . a combination of monarchy and democracy . . . is the ideal state. . . . In the light of modern experience, it is easy to suggest that the reconciliation is to be found in constitutional monarchy limited by a house of representatives. . . . The size of the modern state involves the presence of representative institutions; it involves a system of secondary government, in which the citizen shares in the deliberation indirectly, through the medium of his representation. . . . A representative body must always be more of a filter than a phonograph; however much its members may approach to the character of mere delegates, the assembly as a whole must have a mind of its own, a sense of its own dignity and of the demands of that dignity: it must tend to think not only of what the people wishes, but also of what it ought to wish.[35] . . . election is one thing and representation is another. No body, even if directly elected, is really representative unless it has representative authority, or in other words is entitled to deliberate and decide as the exponent of the general will within its sphere.[36]

Hilaire Belloc and Cecil Chesterton have contrasted the two extreme views as to the relation of a representative to his constituents:

> Either he must vote as his constituents would vote if consulted or he must vote in the opposite sense. In the latter case, he is not a representative at all, but merely an oligarch; for it is surely ridiculous to say that a man represents Bethnal Green if he is in the habit of saying 'Aye' when the people of Bethnal Green would vote 'No.' If, on the other hand, he does vote as his constituents would vote, then he is merely the mouthpiece of his constituents and derives his authority from them. And this is the only democratic theory of representation.[37]

John W. Burgess distinguished representative government from immediate government. "Immediate government is that form in which the state exercises directly the functions of government. . . . Representative government is, in general definition, that form in which the state vests the power of government in an organization or organizations more or less distinct from its own organization.

[33] *Constitutional History of England* (1908).
[34] *The Political Thought of Plato and Aristotle* (1906), p. 89 n.
[35] *Ibid.*, pp. 193–194, 296, 461–462.
[36] *Greek Political Theory* (1913), p. 35.
[37] *The Party System* (1911).

Representative government may be limited or unlimited. . . . [It] may be monarchic, aristocratic, or democratic."[38] In dealing with the constitution of the legislature, he supports the principle of uninstructed representation. "The views of a constituency should always be taken into account as contributing to the make-up of the consciousness of the state; but the will of a constituency has no place in the modern system of legislative representation," though it is a legitimate principle in a system of confederated states.[39]

Advocates of functional representation "maintain that the present system is nonrepresentative and misrepresentative of the interests and views of the people. A territorial region, they hold, is never identified with a particular interest or opinion; each district is the habitation of groups of such various conflicting economic and social needs and views that no clear mandate for the supposed representative can be fused out of them, so that what is really represented is simply one or few of the stronger among the numerous minority groups."[40]

G. D. H. Cole, in support of a system of functional representation, takes the position: "True representation, like true association, is always specific and partial, and never general and inclusive. What is represented is never man, the individual, but always certain purposes common to groups of individuals. The theory of representation which is based upon the idea that individuals can be represented as a whole is a false theory and destructive of personal rights and social well being."[41]

In *The Modern Idea of the State* (1919), Hugo Krabbe analyzes the relation of the representative to his constituents as follows:

> The electors, in choosing members of parliament, express their views about the main points of public administration and choose candidates because they agree with these policies. The prohibitions in most constitutions against mandates and instructions are futile and ineffective. The electors can thus use the franchise to express their views concerning the content of rules of law. And in so far as they do their representatives are no longer free with reference to the bills in which such principles have been embodied. . . . But, excepting the few main points of legislation upon which the electors have expressed themselves in exercising their franchise, there is no direct connection between the elector and the authority of the statute passed by vote of the deputy. Hundreds of times the deputy votes upon rules which the electors did not and could not have had in mind. In such cases the exercise of the franchise does

[38] *Political Science and Constitutional Law* (1913), II, pp. 1–3.
[39] *Ibid.*, II, p. 116.
[40] F. W. Coker, in this REVIEW, Vol. 15, p. 200 (1915).
[41] *Social Theory* (1920).

not settle anything objectively concerning the rules; it determines something merely subjectively. That is, it indicates what sense of right is to pass upon the legal value of the rules. If this is the case, the deputy cannot accept any sense of right as a standard except his own, not even that of his constituents."

Ernest Bruncken has noted that: "One of the things we have learned . . . is that elected representatives may be very far from representing the true deliberate will of their constituents. They may represent a passing phase of popular emotion or delusion. They may stand for nothing but the ambitions, legitimate or otherwise, of individuals. They may be the expression—some would say that they are normally the expression—of special social or economic interest, instead of the commonwealth, and especially of whatever special interest is at any time dominant in the nation." At the same time, recognizing an element of singularity in every man's nature, and that election to representative office shows an element of superiority and leadership, Bruncken considers that people will not accept as leaders men whose characteristics are alien to the masses. "It follows, therefore, that notwithstanding the influence of the individual singular ideas, the personnel of representative bodies and the product of their legislative activities mirror with fair accuracy the present state of public consciousness, and so it remains true, notwithstanding the influence of the personal singularities, that the result of legislative work is, on the whole, determined by popular feeling."[42]

Esmein has defined a representative as one who, within the limits of his constitutional power, has been chosen to act freely and independently in the name of the people. He must have full independence of judgment and action in order to fulfill his mission.[43] Duguit appears to defend the doctrine of the *mandat impératif*, not of the electors of the local constituency from which he is chosen, but from the whole nation of which he is a representative.

A. B. Hall has given the following answers to the question: Should a representative act according to his own judgment and convictions, or should he defer to the wishes and opinions of his constituents? He should fulfill his personal pledges; but few questions are so covered. The power of the party caucus will increase. On a policy on which public opinion is possible, and the vote seems to indicate a real opinion, there are good grounds to argue that the

[42] "Some Neglected Factors in Lawmaking," in this REVIEW, Vol. 8, p. 222 ff. (1919).

[43] *Droit Constitutionnel* (5th ed., 1921), pp. 263, 386.

representative should be bound. Where there is no formal and effective manner of registering public opinion, the doctrine of instruction is more difficult to apply and more capable of abuse. On complicated and technical questions, the representative is better able to decide.[44]

In his *Modern Democracies*, Lord Bryce has analyzed the various views as to the nature and duties of a representative as follows: (1) to urge the local demands of his constituency, (2) to consult with other representatives on public affairs, while also in accord with the general views of his constituents, and (3) as spokesman of the party which holds a majority of the constituency. He considers that the first and third of these views may be reconciled with each other, but not with the second; and he recognizes the difficulties of their consistent application. He notes that the recent tendency in England has been to make the member more distinctly a delegate than in France.[45]

Robert Luce has approved Sidgwick's view that "the periodical election of legislators by different divisions, sufficiently numerous, of the whole community, tends to give us, if not ideal statesmen, at any rate a body of men who possess in the aggregate the special empirical knowledge that is most indispensable."[46] After presenting different views of the nature of representation, and the use of the lot and election as methods of choosing representatives, he concludes: "Representation may sometimes be one thing, sometimes the other. For the moment, anyhow, let us assume that no small part of the function of a representative is to interpret the will of the community and put it into written law."[47]

In his *Representative Government* (1924), Henry Jones Ford, at the outset, takes the position that: "The essence of the term is plainly the fact of representation, however it may be arranged. The idea is that the people, while not in person present at the seat of government, are to be considered as present by proxy. The way in which the system of representation is arranged, the conditions under which it acts, the scope of its authority—all these are matters of great importance in determining the quality and effect of the system, and differences in these respects produce marked variety in representative government as displayed in actual practice; but

[44] *Popular Government* (1921), Chap. 3.
[45] *Modern Democracies* (1921), Chap. 59.
[46] *Legislative Assemblies* (1924), p. 342.
[47] *Legislative Principles* (1930), Chap. 9.

the characteristic mark of the type may be regarded as simply the representative intention, however expressed in actual arrangements, whether well or ill." A large part of this book is, however, directed to a discussion of what the author considers the essential and fundamental conditions of a truly representative government. These conditions he found to be: (1) free election by the people, (2) direct contact with administration, (3) securities for the misuse of representation, (4) elections limited to the choice of representatives (excluding administrative, executive, and judicial officials), and (5) supervision and control of the whole field of government. Following Mill, he holds that the function of a representative assembly is, not to govern, but to watch and control the government.

In R. M. McIver's *The Modern State*, a different view from that of others is taken as to the distinction between a delegate and a representative:

> Delegation involves the choice of men, but representation involves also the choice of measures. Delegation in its completest form . . . assigns no limitation of tenure and no conditions of the exercise of power. Representation implies both direction and control. Delegation requires the consent of the governed, whereas representation requires the fulfilment of their will. . . . Whom and what does the representative represent? Is it the whole state or is it his own constituency? Is it the party to which he belongs, or is it the particular interest or interests which have secured his election? Again . . . is he a mouthpiece or a mere agent, appointed to carry out instructions and to conform in every respect with the wishes of those whom he represents?

These, McIver recognizes, are difficult and important questions, and he discusses at some length the relation of representation and responsibility. His general conclusion is: "The representative is elected on the ground of a general policy which he supports. The elector expresses his attitude toward that policy, not toward individual measures. Apart from such particular pledges as he may give, the representative is bound to a cause, a movement, a party, not to a whole series of individual projects. So long as he is faithful to the cause, he must exercise his own judgment."[48]

Stuart A. Rice takes the position that:

> The legislator is representative, first because voters tend to select men of their own 'kind' to office, even though the similarity in kind may be based upon the voter's 'identification' of himself with the social, economic, or intellectual attributes of the office-holder. The legislator is representative in a second sense, based upon the first, because he responds to legislative issues on the whole in about the same manner as would his fellow group-members in the constituency. However amenable to 'influence' he

[48] *The Modern State* (1926), Chap. 6.

may be, there is a constant 'strain' in the legislator's behavior toward consistency with the *mores* of his various groups. . . . There are other respects in which we may be sure that the legislator is *not* representative: in wealth, usually; in ability, perhaps; in legal and political training certainly; and in education and intelligence we may doubtfully hope."[49]

Arthur Berriedale Keith distinguishes between representative and responsible government. He considers that representative government involves the relative independence of the executive and the legislature, as in the United States, where it has been employed with general acceptance. In British territory, however, it has usually proved unsatisfactory, though for various reasons; and in the self-governing dominions it has been succeeded by responsible government, in which the executive is responsible to the legislature.[50]

In his recent work, *The Elements of Politics* (1936), Francis G. Wilson finds a number of answers to the question: What does the representative represent? One is that he "should represent his own opinion on public issues, and should accept a personal responsibility at election time." Another "is that the representative reflects the effective majority sentiment of his constituency. . . . " "A third interpretation . . . is that the legislator is an exponent of the general will of the political community." He concludes: "In any case, the representative represents the people. . . . From a realistic viewpoint, the representative is constantly ground between conflicting determinations of individuals of power and groups of power, and it may be more than an incidental disease of representative institutions if the representative fails to perceive clearly the substance of a general will; it may be that the people do not actually have a general will . . . in the arena of actual struggle over purposes and means, the general will is to be found, if at all, only in scattered fragments."[51]

In an article on "Representative Government in Evolution," Charles A. Beard and John D. Lewis took the position that "the modern idea of representation can be broken into three component parts: (1) a representative person or group has power to act for, or in place of, another person or group; (2) the representative is elected by those for whom he is to act; (3) the representative is responsible for his acts to those whom he represents."[52]

In a recent study, *Medieval Representation and Consent* (1936), Miss Maude V. Clarke has traced the development of the principle

[49] *Quantitative Methods in Politics* (1928), pp. 193–194.
[50] *Responsible Government in the Dominions* (2d ed., 1928).
[51] P. 359. [52] See this REVIEW, Vol. 26, p. 228 (1932).

of representation in three stages: (1) that of personification in primitive cults, as the priest-king and the scape-goat; (2) for acts of administration, as in the jury and in local bodies; and (3) for political action, based on "a mandate to act for their constituencies, which is both temporary and general; it must be acknowledged that they owe to their electors not obedience, but judgment; that judgment must be exercised in coöperation with other representatives, in a like manner empowered."[53]

In her study entitled *The Theory of the Democratic State* (1937), Miss Marie C. Sweeney holds that: "The principle of sampling in democratic theory is that a smaller group, selected impartially or at random from a larger group, tends to have the character of the larger group. Accordingly a part, if properly chosen, may be taken as truly representative of the whole and substituted for it."

In his recent *Constitutional Government and Politics* (1937), Professor Carl J. Friedrich emphasizes the dual nature of representation:

> The body of historical fact shows us clearly that it is quite impossible to draw a hard and fast line between agents with definite instructions or mandates and representatives empowered to attend to a general task. An elected body may and usually will be both a set of agents from different interests, and a representative group determining the common interest. Therefore, . . . Parliament is both: a deliberative assembly from one nation, with one interest, that of the whole, as well as a congress of ambassadors from different hostile interests.

Harold W. Stoke has called attention to the great paradox of representative government:

> Originating as a device to discover the general interest, representative government functions ideally only when it completely reflects the great variety of interests and feeling within the state, when it represents most accurately every substantial element of the state which is politically significant. But where the state itself is a mosaic of the most diverse and antagonistic interests, the representative system, simply because its first duty is to interpret faithfully this diversity, cannot itself be the means of compromising and composing the very differences it was designed to reflect. The more perfect the representative system, the more certain it is that opposing interests will face each other in the political arena. And the more numerous and divergent the interests, the less the likelihood that any kind of a program can emerge. . . . . Unless representative government uses . . . means of resolving its inherent contradictions, its decline would seem to be a consequence of its peculiar nature.[54]

[53] Chap. 13.

[54] In Mathews and Mabry, *Essays in Political Science* (1937). Cf. W. Ivor Jennings, *Parliament* (1940). In chapter 7, "Who Makes the Laws," this author notes the numerous factors behind the formal process of legislation. In the concluding

In conclusion, it may be said that seldom, if ever, can any person completely represent even another single person unless bound by definite instructions. In practice, however, even in such cases, both the scope of authority and the range of discretion vary widely. When one person represents a group, and still more when a number of persons represent different groups, the problem becomes much more complicated. Specific instructions or pledges on particular matters of policy may be given, or the final decision may be referred to those who are represented; but if a considerable number of matters are to be considered, such procedure would at best involve prolonged delays, and would make definite decision and action all but impossible. The members of an assembly or council representing a larger body of constituents will almost necessarily have a large range of discretion. At the same time, if the members are to be considered in any substantial sense as representative, they should give weight to the wishes and the interests of those who are represented.

A representative need not necessarily be chosen by those whom he represents. But a system of election seems more likely to secure representatives who will represent their constituents to a considerable degree, at least on matters of general policy. As to whether the representatives should be guided by their own immediate constituencies, by their party, or by their own views as to the best interests of the country as a whole, it may be said that all of these factors are likely to affect their decisions, in varying degrees, according to the definiteness and intensity with which these elements are expressed and recognized.

The position that the representative is free to act on his own judgment states the legal position in most modern constitutions, though qualified in practice by personal pledges, party policies, and in some cases by provisions for the initiative, referendum, and recall. But it should be recognized that it is subject to abuse, and may be used as a screen for personal advantage or for yielding to the pressure of special interests.

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chapter, he remarks (p. 499) that "the main task of the member is to forward the interests and support the policies of as many of his constituents as he can"; and (p. 503) that "public opinion is often merely the sum of the opinions of minority groups, that members represent such groups as well as their constituents, and that matters of general concern are comparatively few."

THE ELEMENTS OF DEMOCRACY

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"As for democracy, why should we discuss acknowledged madness?" Today numerous clever writers and some serious students are asking the same question that Alcibiades asked some twenty-three centures ago. Yet at the very time when democracy is attacked from all sides, and when Mussolini can speak of trampling on the putrid corpse of liberty, Mussolini himself has the temerity to proclaim that Italian Fascism is the realization of "true democracy." The Nazis, speaking through Herr Goebbels, present the National Socialist state as "the most ennobled form of a modern democratic state." And, not to be outdone, Stalin announces that the Soviet constitution of 1936 is "the only constitution that is democratic to the limit." Two points, then, appear very clear at the outset. First, a theoretical defense of democracy is made more complicated by the unscrupulous license with which the enemies and critics of democracy use the term; and second, "democracy" as a vague, meaningless symbol still has a propaganda value for those who repudiate or disdain any real meaning that the symbol may have.

It is not my purpose to examine in detail the criticisms of democracy, but rather to indicate which of the numerous criticisms are relevant to a discussion of democracy. What is it that is under attack? Is it the basic assumptions of democratic theory, or the machinery of democratic government, or both? To put such a question means, of course, to reopen the old question: What are the *essential* elements of democratic theory?

Consent is an essential element of democratic theory, but not a distinguishing element. The important test is not whether a major portion of the adult population accepts or approves a government or its policies, but the manner in which this consent is secured. Both Napoleon I and Napoleon III secured the consent of the French people to their imperial dictatorships, and Hitler secured the formal consent of the German people to his puppet parliament and to his own dictatorship. Schuschnigg was about to secure the consent of the Austrian people to the continuance of a non-Nazi, clerical, native dictatorship, but instead Hitler secured the consent of the Austrian people to a Nazi dictatorship.

What distinguishes this type of consent from the consent which we would recognize as democratic is the absence of a genuine alternative. The decision is made before the vote is taken, and it is apparent that the vote will not change the decision. What is desired is merely popular approval, and not popular participation in the decision. Democratic theory assumes popular participation in the *making* of decisions. That necessitates a representative parliamentary system surrounded by devices which will protect the freedom of election, free discussion before the election, and freedom of parliamentary debate. It necessitates not only the tolerance of opposition, but also machinery which will enable minority groups freely to express their views and actually to participate in the formulation of decisions. Decisions simply imposed by a majority, unaffected by the impact of minorities, cannot be considered genuinely democratic decisions. Hence, basic civil rights—freedom of speech, freedom of the press, freedom of assembly and association—need not be construed as natural rights of individuals. Once we grant the right of universal participation in political control, they follow as necessary corollaries of that right. They are a necessary part of any democratic system.

But what is the basis of this insistence upon popular participation in control? There are several possible answers. There is the crude and simple "ballots in place of bullets" answer, which bases the necessity for following the opinion of the majority upon the erroneous assumption that in a test of force the majority would always be able to coerce the minority anyway. There is the answer of the natural-rights theorist that each must share in control in order that each may protect the rights which are his by nature. There is the utilitarian answer that each must have the opportunity to protect his own interests, and that therefore "each is to count for one and no one for more than one."

But the most satisfactory answer is that which derives a right of all to participate in control from the postulate of the ethical value of individual personality. This major premise of democratic theory has frequently been given a religious basis and frequently a philosophic basis which comes close to being religious. I am content to speak of a postulate which seems to me not contrary to reason nor obviously disproved by experience. This postulate is perhaps simply an article of faith, but it is the one article of faith thoroughly basic to democratic theory. It has been accepted by

most significant democratic theorists, although frequently stated indirectly in terms of natural rights of individuals. In the United States, it has been especially well expressed in the writings of Jefferson, in the doctrines of the early nineteenth century Unitarianism of New England, and in the social theory of Emerson. "Nothing," said Emerson, "is at last sacred but the integrity of your own mind."

In an early essay on "The Ethics of Democracy," John Dewey stated well this central democratic postulate:

> In one word, democracy means that *personality* is the first and final reality. It admits that the full significance of personality can be learned by the individual only as it is already presented to him in objective form in society; it admits that the chief stimuli and encouragements to the realization of personality come from society; but it holds, none the less, that personality cannot be procured for any one, however degraded and feeble, by any one else, however wise and strong.[1]

Individuals must be allowed a share in political control because to command obedience without free participation in control is to deny the right of all to self-development through responsibility for their own acts—is to reduce men to the degrading irresponsibility of slaves or mules.

The criticisms of democracy which are based upon individual inequality obviously have no bearing upon this conception of it. The type of equality described here has no necessary relation to differences in individual ability, however great those differences may be. No sane democrat would maintain that equal opportunity for personal development must yield equal results for all individuals.

The work of Wallas, Lippmann, and others has thrown doubt upon the possibility of rational participation in government by the mass of individuals. But this incapacity of the mass of individuals is often exaggerated by a mistaken idea of the necessary rôle of both voters and their representatives in a democracy. We may assume that people generally can have a fair notion of what they want without knowing what is possible or exactly how to satisfy their needs or wants. Voters need not be experts on agriculture, education, road-building, criminology, or the tariff; nor, in fact, need their representatives. But the non-expert voter can indicate through the choice of his representative a general program of governmental policies that he can approve. It then becomes the

[1] In University of Michigan, *Philosophical Papers* (Ann Arbor, 1888), p. 22.

duty of the representative to discover how to formulate this program in terms of specific policies. But that does not necessarily reduce the representative to the rôle of mechanical spokesman for his constituents, nor is demagoguery the sole alternative. Democracy—the American democracy, for example—can produce, and has produced, political leadership which is constructive as well as responsible. Before concluding that democracy and constructive leadership are irreconcilable, the critics should study the long career of Robert M. LaFollette, Senior, and then note that the tradition established by the elder LaFollette was later maintained by his sons. The careers of Huey Long and Frank Hague cannot erase from the record such democratic leadership as is illustrated by Wilson, the two Roosevelts, Lodge and Root, Norris, Borah, Glass, Gifford Pinchot, and, in local government, Johnson, Seasongood, Hoan, Dykstra, LaGuardia.

It is the task of the democratic representative to educate his constituents in the relation between their ends and the specific and possible policies which are means to these ends. But, like the voter, he cannot have an expert knowledge of every issue he must face. It is his task to discover from those who have expert knowledge how much of the necessarily vague program of his constituents can be realized, and how it can be realized. This brings us to the importance of administrators in their constructive and advisory capacity. We are finally becoming convinced in the United States that President Harding himself was a bit simple when in the early twenties he remarked that "government, after all, is a very simple thing."[2] Voters need not be experts, representatives need not be experts, but administrators must have expert knowledge of what can be done and how it can be done most efficiently. A well trained and experienced administrative personnel is perhaps even more important in a democracy than in a system designed to manipulate popular consent into conformity with the views of a ruling group. And a well trained and experienced personnel cannot be maintained in the face of a popular opinion that government administrators are by nature clerks, or crooks, or, according to the more recent version, visionary meddlers. Senator Borah has re-

[2] Quoted in F. Frankfurter, *The Public and Its Government* (New Haven, 1930), p. 149.

ferred to "that meddlesome, irritating, confusing, undermining, destructive thing called bureaucracy."[3] In spite of Senator Borah's opinion, the tendency towards the professionalization of administration is one of the most encouraging of recent American political developments.

Because democracy requires professional administrators, this profession should not be subject to the direct control of non-professional voters. Although the student body is most directly affected by the personnel of a college faculty, no one would suggest that a student body should elect its professors. Although the members of a community in which a doctor proposes to practice will be most directly affected by the doctor's qualification to practice, no one suggests that the doctor be licensed only after a town or village election. Yet this is exactly the sort of thing that we still do when we elect a coroner, a judge, or a city solicitor. Universal participation in control need not mean, as it has come to mean in the United States, direct election of federal, state, and local representatives, plus direct election of a governor, a lieutenant-governor, a secretary of state, an auditor, a treasurer, and an attorney-general, plus direct election of a couple of judges, plus direct election of a list of miscellaneous legislative and administrative officials for the county and of a fourth list for the city, plus direct election of a few scattered boards or commissions. Even educated Americans still have difficulty in understanding that to extend election beyond offices which are properly representative and policy-forming may help to destroy responsibility to the electorate as well as to render meaningless the task that the citizen as a voter has a right to perform.

Incidentally, this emphasis upon the necessary creative rôle of voter, representative, and administrator suggests some doubt as to whether the use of the referendum for ordinary legislation is consistent with democratic theory. For here the voter is not asked to participate through his representative in the working out of policy. He is asked to say yes or no to a policy which will stand or fall in the exact form in which some group presents it. The device of the referendum, or the combined initiative and referendum, is based directly upon a view of democracy which stresses the me-

[3] Quoted by H. W. Dodds, in "Bureaucracy and Representative Government," *Annals of the American Academy of Political and Social Science* (Jan., 1937), p. 165.

chanical unity of sovereign individuals with ready-made opinions. And that is not the view which has been argued here.

The civil rights so highly valued in democratic theory—freedom of investigation, freedom of speech and discussion, freedom of the press, freedom of association—may be deduced as necessary corollaries of the right of all to participate in control; and the latter is in turn a necessary corollary of the democratic belief in the worth of individual personality. But I would go further and suggest that a whole system of individual rights may be deduced from this central democratic dogma. Individual rights may be construed as privileges or powers socially recognized as necessary to individual development. Rights do not exist as native equipment of individuals apart from society; social recognition of claims brings them into existence; but there does exist an objective normative basis of rights in the democratic dogma. T. H. Green puts it thus: a right is "a claim of the individual, arising out of his rational nature, to the free exercise of some faculty," and, on the other hand, "a concession of that claim by society, a power given by it to the individual of putting the claim in force."[4]

This theory of rights implies equality of rights for all men, although it assumes that men, being unequally capable of development, will make unequal use of equal rights. But, however unequal individual capacities may be, no man, if he is deemed fit to remain in society, can be denied equality of opportunities for self-development. The state has the positive function of providing as far as possible the conditions under which individuals can work their own maximum good. The obligation of the state to enforce reciprocal rights and obligations equally towards all might be stated in terms of social interests recognized and fostered by the state. For, following our theory, social interests must be the interests of individuals integrated into a pattern of social relationships.

This is a highly individualistic view. But it differs from that type of atomistic individualism which sees a necessary and perpetual struggle between "man and state" or "individual and society," and which, by an impossible stretch of creative imagination, conceives that society is composed of a multitude of independent individuals equipped with ready-made faculties and rights. But our theory differs also from that type of organic theory which assumes that society is an entity distinct from its members, and that individual

[4] *Lectures on the Principles of Political Obligation*, Sec. 139.

rights are mere concessions from the state in the interest of the organic social whole. This organic approach is of interest to one who is seriously concerned about the common use of traditional American notions on individual rights as a rationalization of economic exploitation. The merit of the organic approach was its emphasis upon the intimacy and necessity of the ties which bind men together. It meant, as Professor Sabine says, the "rediscovery of the community." But what is really involved in the community is still a system of relationships, and however complex this system of relationships may become, there is no point in, and no excuse for, hypostatizing the relationship or assuming that two plus two equals an organic five.[5]

The social theory of rights deduced from our democratic dogma has important consequences. Rights are no longer regarded as ends in themselves. Nor is the catalogue of rights fixed for all time by nature, God, or the nature of man. I cannot attempt here an adequate discussion of any inventory of individual rights which might secure positive freedom for individuals in the United States today. Some, however, might be mentioned. The list would necessarily include those traditional rights to freedom of speech, press, assembly, and association which have been found to be essential to democratic participation in political control. In addition to these, we should probably all agree upon the present rights recognized in the federal constitution for the protection of persons accused of crime. Beyond this point there would be considerable disagreement. If, as most liberal theorists have agreed, the right to possess private property is essential to individual development, then the right to private property must continue to be recognized and protected. But the right to private property is one of the rights most clearly dependent upon social recognition and protection. It is, therefore, a right subject to limitation and control through the decisions of society as to what the property right should include. Dean Pound and others have pointed out a constant tendency in the modern law of property to restrict its unsocial use. Such restrictions include, for example, limitations upon the power to dispose of property, limitations by means of zoning laws upon its use, curtailment of the rights of creditors, liability without fault for injuries to factory workmen, the withdrawal of land from private

[5] On this point, see the sensible reasoning of R. M. MacIver in *Community: A Sociological Study* (London, 1917).

ownership for the purpose of conserving natural resources. Of necessity, the list of such restrictions grows steadily.[6]

In a highly suggestive address on "Democracy in Transition,"[7] the late Dean Walter J. Shepard listed a number of individual rights which are not yet generally recognized, but are now at least within the realm of discussion. The list includes "the right to creative work," "the right to an adequate standard of living," "the right of the worker, through collective bargaining with his fellows, and through other means, to a substantial share in the management of the industry to which he has devoted his labor and his life," "the right to security against the hazards of unemployment, accident, illness, and old age," "the right to the best service that science can provide in the maintenance of health," "the right to leisure and its effective use."[8] And, finally, Shepard added the right to a type of education which "must constitute the central purpose and goal of the nation" and must aim at "the ideal of unshackling every capacity and faculty of the individual, of completely emancipating the human spirit."[9] Dean Shepard remarked in his address that these rights "entirely escape the limits of the theory of political democracy." They do not escape the limits of the democratic theory suggested here.

The suggestion that the positive control of the state over economic relations might be greatly expanded for the sake of greater opportunity of development for many individuals meets two objections. It is argued, first, that increasing regulation of economic activities must mean decreasing civil liberty, and, secondly, that there is no middle ground between an unregulated economy and thorough, hundred-per-cent regulation of the whole national economy. For the first claim, I see no evidence. The evidence would seem to prove the opposite. That increasing economic control need not destroy civil liberties would seem to be demonstrated by the fact that the increasing control of the past quarter-century in the United States has not been destroying or curtailing civil liberty. To assume that expanding economic control must mean decreasing civil liberty is to apply a deterministic economic interpretation to a new purpose.[10] Similarly, to claim that some degree

[6] Cf. R. Pound, *The Spirit of the Common Law*, pp. 185–190.

[7] In this REVIEW, Vol. 29, No. 1 (Feb., 1935).

[8] *Ibid.*, pp. 12–13. [9] *Ibid.*, p. 14.

[10] On this point, see T. V. Smith, "Political Liberty Today," in this REVIEW, Vol. 31, No. 2 (April, 1937).

of economic control must lead to complete, totalitarian collectivism is to make an assumption which has not been proved, and which ignores a type of economic planning and control that does not involve centralized state collectivism—as illustrated today by Denmark and Sweden. To point to Fascist Italy, Nazi Germany, and the Soviet Union in proof of the two claims is totally misleading. In the first place, the necessity of dictatorship is part of the theory of all three, and in two of them the whole concept of civil liberties and active participation in control is repudiated as liberal nonsense. In the second place, they did not slide into totalitarian dictatorship in the course of efforts to meet serious economic problems. Each of the three régimes was established by revolution through a party determined to destroy the existing structure. And in Germany and Italy it might well be argued that the dictatorship came, not because the liberal government tried to do too much, but because it did too little.

The democratic ideal of maximum development of personality is an ethical ideal—the goal is really a moral goal. Consequently, some liberal democrats tend to regard the present emphasis upon the necessity of providing an economic basis for democracy as degrading to the democratic ideal—as the unfortunate result of twentieth-century materialism. Such an attitude is suggestive of the attitude of Plato and Aristotle, who saw an incompatibility between the necessity of making a living and the noble duty of citizenship. It assumes that the production of material goods may be necessary to what is intellectually and morally good—but that the two processes, material production and moral development, are necessarily separate, if not mutually hostile. To regard the present drive towards economic democracy as merely the search after "liberty of the stomach" is to misrepresent its true meaning. Most of us will agree with Carlyle that the political liberty to starve or freeze when no job can be found is no real liberty and not very elevating to individual personality. The elementary necessity of providing an opportunity for individuals to live according to some minimum human standard would seem to rest upon any democratic society as a prerequisite to the realization of a higher democratic ideal. But—and this is more important—the problem of economic democracy is the problem of integrating the making of a living with other aspects of social life and with personal development generally. The recent slogan of the right of the worker in his job (*his*

job, not *a* job) becomes from this point of view, not a ridiculous bit of "C. I. O. bolshevism," but recognition of this right of personality to develop itself in socially useful activity. That such a slogan seems to many to be ridiculous is but evidence of current exaggeration of the privacy of property and its inviolability as against other rights.

There remains a last general problem, and it is, perhaps, the most difficult problem of democratic theory. Democratic theory must be based upon the existence in the democratic community of a common interest or common will as the basis of political action. If such a common interest cannot be discovered, if the interests of divergent groups become irreconcilable, the participation of all must be abolished or must be degraded to the level of automatic consent to the program of a dictatorial government.

By defining society as a mechanical combination of sovereign individuals, and democracy as simply a form of government based on majority rule, the problem is really avoided. Democracy comes to be pictured as a series of problems in arithmetic.[11] The problem of controlling or influencing democratic policy becomes the simple one of shifting a few mechanical vote units this way or that to form this or that temporary "will of the people." This is an excellent ward-boss conception of democracy. Party and corruption become, as Sir Henry Maine said, the instruments for effecting a temporary and mechanical unity of will and action out of isolated, unsocial, individual units.

There are two traditional solutions of this problem of a common interest or a common will so conveniently ignored by the atomistic construction. On the one hand, it may simply be assumed that a natural harmony of interests will exist in a democratic society, since the interests of the society *are* the interests of its individual members. When given a naturalistic, pseudo-scientific basis by Spencer and Sumner, this assumption led to the conclusion that only evil can result from the puny efforts of human beings to produce a more apparent harmony of interests than that resulting from the beneficent operation of natural laws. But facts simply do not support the idea of a *natural* harmony; and to claim that human effort is at the same time futile and harmful is illogical. On the other hand, the state may be construed as an organism, and the common good then explained simply as the independent good

[11] Cf. Dewey, "Ethics of Democracy," p. 8.

of this organism, the object of a transcendent will which is not the will of the individual members. But if we reject the notion that the state is composed of a multitude of sovereign individuals, need we substitute the belief that the state itself is an organic entity with an independent will of its own? There is no reason why this need be. The point is made very cogently by Morris Cohen in an article on "Communal Ghosts in Political Theory," in which he suggests that two oxen when yoked together "do create a body, to wit, a team" which differs from each ox individually. But that does not prove that a new ox has been created.[12]

To assume that a common interest will represent a preordained harmony or the interest of an organic unity which is something different from, and more than, the individuals who compose the unit, is to make an untenable assumption. Further, it invites the dangerous conclusion that since *one* right course exists, since there is an absolute common good, an élite group, however small, which is able to rise above petty and partial interests to a vision of the *true* national interest is the best guardian of the welfare of the state. Hence a rationalization of the desire to rule of a National Socialist clique gathered round their *Führer*, of *Il Duce* and a Fascist Grand Council, or of a Stalinist group which regards itself as the "vanguard of the proletariat."

The democratic theory that I have sketched demands that a common interest be understood, at least in its general outlines, by those to whom it is common; and that it must represent a unity that exists, at least potentially—not a unity that is first postulated and then created by force and propaganda. The representative and parliamentary systems in a democratic state are, then, devices, not for discovering a common interest or common will, but for formulating a common interest by free discussion and compromise—for evolving through discussion and compromise a policy that will be acceptable to at least a majority of individuals. The function of elections and of parliament then becomes a positive integrating function. The basis for this integration on the ground of a common interest must exist, but finding the integrating formula is a creative function of democratic parliamentary machinery.

Here I reject the Marxist assumption that economic interests in

[12] *Reason and Nature*, p. 392; reprinted from *Journal of Philosophy*, Vol. 17 (1919).

capitalistic states are so rigidly fixed in terms of class conflict that there is no possibility of creating a common interest. It is perfectly true that when party groups march into parliament in solid squads pledged not to yield one point in their programs, parliamentary government becomes impossible. But so far the instances of this sort of political-economic intransigence have appeared only in those states in which a tradition of democratic compromise has never been deeply rooted. And in England and the United States, history affords numerous examples of significant compromises which a few years before they occurred might well have seemed impossible to a doctrinaire exponent of inevitable class struggle. I might cite, for England, the First Reform Bill, the Factory Acts, the Parliament Act of 1911, and, for the United States, regulation of railroads and other utilities, the income tax amendment, and, more recently, the Wagner Act, the Social Security Act, and the Wages and Hours Act. Apparently, compromise is still at least a possibility; and, without assuming a Pollyanna rôle, one may question the soundness of basing a fatalistic theory upon the belief that it is not.

By emphasizing this creative function of elections and parliament, we come once more to the importance of the rights to freedom of discussion, press, assembly, and association. Wholesale suspension of these rights might well be taken as *ipso facto* evidence of the suspension of democracy and the institution of some variety of dictatorship.

However, the democratic necessity of freedom of speech, press, association, and parliamentary debate need not render democracy defenseless against the activity of groups that would destroy these liberties. Surely we must agree with Hamilton Fish Armstrong that democracies do not have "a sovereign right of suicide."[13] But what specifically can a democratic government do to prevent the use of democratic liberties for non-democratic ends? Certainly it must insist upon retaining its monopoly of force. It need not allow a militant-minded political party to uniform or arm its followers or put them through private military training. It need not interpret freedom of assembly to mean freedom to create riots by provocation. Similarly there should be no question about the right of a democracy to suppress organized intimidation or vigilantism of the Ku Klux Klan type. But can we justify the dissolution of a

[13] *We or They*, pp. 84 ff.

"subversive" party or association? I think that here, too, we must admit the right of a democracy to protect itself by dissolving any group whose existence constitutes an imminent danger to the peace or existence of the democratic state. The dissolution need not, and should not, be based upon the principles of the party or association, but it can, and should, be based upon the record of overt acts for which party responsibility can be proved. Obviously, no absolute, theoretical line can be drawn between permissible and non-permissible party activity, and obviously also the manner in which any restriction of this sort will be enforced is far more important than the statement of the restriction.

May a democratic government restrict freedom of speech? I think that it must, and that the general principle stated above must hold here also. The test which Mr. Justice Holmes suggested goes as far as we can go towards laying down a general principle. "The question in every case," said the eminent jurist, "is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has the right to prevent. It is a question of proximity and degree."[14]

A democratic government might safely use other self-protective measures. It might recognize a necessity for very stringent libel and slander laws to protect public officials from politically-motivated lies. A democracy certainly needs stringent and *enforced* laws requiring parties and publicity organizations to make full public statements concerning their financial backing. In the "back-to-work movement" of the summer of 1937, we have an excellent example of the familiar technique by which a small, well-financed interest group creates the impression that a strong popular movement is behind its program, and then uses the non-existent popular movement to support its demands. The right of the representatives of a particular party to sit in parliament and in local councils cannot be denied so long as the party remains a legal party. But a democratic parliament must be able to adopt rules of procedure which will prevent the use of parliament simply as a campaigning platform.

In a challenging article on "Militant Democracy and Fundamental Rights,"[15] Professor Karl Loewenstein is willing to go

[14] Schenck v. U. S., 249 U. S. 47 (1919).

[15] In this REVIEW, Vol. 31, Nos. 3–4 (June, Aug., 1937).

further than the steps here suggested in arming democracy for defense against fascism. He suggests, for example, the political neutralization of the administrative bureaucracy as well as of the armed forces. I think that our theory of democracy excludes the possibility of denying to civil servants the right to vote; and, admitting this right, the federal oath of office and the federal civil service rules concerning political activity[16] would seem to go as far as legislation can go toward political neutralization.

Perhaps, however, all of these measures for guarding democracy are far less important than the existence or non-existence of a widespread conviction that democratic compromise and coöperation are still possible, and that the values of democracy can and must be preserved.

[16] "No person in the executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the results thereof. Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns." *Civil Service Act and Rules, Statutes, Executive Orders and Regulations*, U. S. Civil Service Commission (1936), p. 13. The Hatch Act, Public. No. 252, approved Aug. 2, 1939, prohibited certain practices which had not been specified earlier and extended the prohibition against political activity to *all* federal employes.

The Rôle and Management of the Federal Statistical System. The profusion of American statistics is a frequent source of astonishment to statisticians of other nations. Statistics are assembled and published by official agencies at all levels of government; by trade and industrial associations; by individual business concerns; by the church, universities, and the press; by professional research organizations; by a multitude of societies and associations with innumerable aims and programs; and sometimes by the plain citizen himself. Collectively, the statistical activities of the nation comprise a *system* in the same sense that the activities of four and one-half million business units comprise a national economic system.

There is, in fact, a functional relationship between the national statistical system and the socio-economic order of which it is a part. The primary functions of social and economic statistics are to illuminate practical problems, to assist in the determination of policies, and to aid in arriving at administrative decisions. No sharp line can be drawn in these respects between public and private affairs. Statistics find their *raison d'être* as tools, to be used by public officials and by all manner of private interests, and in each case to make some part of the socio-economic system work more effectively.

Principal attention in this discussion will be given to the statistical system of the federal government, its management and its rôle in federal administration. However, this limitation will scarcely reduce the dimensions of the subject, for the reason that there is scarcely an aspect of organized social activity that has no reflection or counterpart within the federal government. In other words, federal statistics cover substantially the entire area of social and economic affairs in the United States.

In general, federal statistics reflect two types of governmental obligations. Government is obligated, first, to strive for the adoption of sound public policies and for the administration of public affairs with wisdom and efficiency. This obligation includes a specification of the rules and conditions of private enterprise, whenever the latter is vested with a direct and immediate public interest, warranting regulation, as in the case of railroads and other public utilities. A sovereign government is obligated, secondly, to recognize its broad responsibility for the adequate functioning of the socio-economic order as this results from private enterprise. In the course of social and political evolution, Washington has become the guardian, referee, and residuary legatee of *laissez-faire*. The extent of its administrative responsibilities and activities will be proportionate to the inability of private enterprise, by itself, to provide and distribute to all of the people the goods and services comprised in attainable living standards.

It follows from these obligations, now firmly lodged in the federal government, that it is entitled to collect whatever information it requires for the administration of national affairs, or for a proper accounting to its citizens of its trusteeship; further, that citizens may look to the federal government for information upon which to guide their own affairs, whenever such information is not readily obtainable by individual effort.

Federal statistical work is thus of two general types. The larger part, approximately three-quarters of the total in volume, is administrative in a narrow sense. It produces aids and guides to the officials who administer the details of vastly proliferated governmental services and regulatory activities. Social security, relief, and transportation statistics offer numerous examples. Again, under this heading, useful informational by-products are often derived from administrative procedures, as in the case of income tax statistics. The remaining one-quarter of federal statistical work is justified primarily as a service to the general public, although it also fills many needs of governmental agencies. The importance of this one-quarter can scarcely, of course, be gauged by its volume. Outstanding illustrations of the types of statistics referred to are produced in a decennial census. A list of those who make use, directly or indirectly, of the statistical data assembled in this great national inventory would scarcely omit any government bureau, however non-statistical, any business concern, however small, or any private citizen, however inconspicuous.

The federal statistical system has many of the characteristics of the national statistical system of which it is a part and of the social economy which it supplements. It is made up of a large number of semi-competitive, semi-monopolistic, semi-integrated agencies, without very effective central control. This is true also of the administrative agencies to which the statistical agencies are subjoined. Citizens are prone to think of the federal government as a single entity, unified in its organization and operations no less than in its sovereignty. The actuality does not conform to this conception, and many misunderstandings result. Why, it is often asked, should the government demand certain information about my business, and then presently again demand the same information for a slightly different period or in a slightly different form? Why, for example, if I head an electric utility, should I be asked to report my total pay-roll or number of employees, or both, to six different federal offices, on 12 different forms, at intervals varying from one month to one year?

The answers are found in the fact that citizens never deal with "the government," but only with semi-autonomous and well-nigh independent agencies of government, whose relations to each other are often analogous to the relations among independent and competing business firms. Without doubt, the citizen has a "right to expect" coherence where it has never actually existed. The development of coherence in the traditionally de-

centralized statistical system of the federal government is a desirable objective. It is a cause to which I, among others, have been devoting my best efforts as a federal employee for some six years.

The decentralization of federal statistics is a product of historical growth. It reflects the piecemeal extension of federal administrative functions. Administrative statistics and general purpose statistics have grown up together, but, unlike the first, which have developed in many specialized directions in many agencies, the collection of general purpose information has been confined for the most part to a few agencies. The largest and most widely known of these is the Bureau of the Census.

It is widely assumed that the decennial census, from which the Bureau of the Census evolved, provides the "main stem" of federal statistical growth. It would be more correct to say that there have been two "main stems"; or, better, one trunk, symbolizing the decennial census, and a thicket of miscellaneous seedlings, the first sproutings of which were contemporary with the first census, representing a multiplicity of administrative statistical activities, independent of the census and of each other.

The first statistical publications of the United States were the one-volume, 56-page report of the census of 1790 and several administrative reports on foreign commerce covering the same year, prepared under the direction of Alexander Hamilton, Secretary of the Treasury. Today, the Bureau of the Census issues a multitude of current reports at monthly, quarterly, annual, biennial, quinquennial, and decennial intervals, on population, families, births, deaths, occupations, unemployment, crime, prisoners, religious bodies, insane and defectives, accidents, agriculture, horticulture, irrigation, drainage, manufactures, mines, forests, the finances of state and city governments, wholesale and retail trade, services, amusements, and numerous business items pertaining to a considerable number of particular industries. These reports have generalized and varied uses. They are intended as a service to the nation at large or to particular groups of citizens.

At the same time, according to an inventory covering the fiscal year 1938, 87 other federal "agencies" of the magnitude of bureaus or independent offices collect reports from the public—the raw materials of statistics. During the year mentioned, an aggregate of 97½ million "administrative" and 38 million "non-administrative" returns of information were made to 88 agencies of the federal government (including the Bureau of the Census) upon approximately 4,700 separate forms.

The demand for greater coherence in federal statistical activities is of long standing. Despite many technical and administrative improvements in the system, however, progress in the direction of coherence has never kept pace with the addition of new functions to the federal structure. Legislation providing for these functions has usually included directives

or authorizations for the collection of statistical information, in language ranging from the most specific to the most general. Little attention has been paid in drafting these provisions to the existence of parallel and unrepealed authorities vested in other agencies. Conflicting statutory authorities and mandates are thus an important impediment to the simplification of the federal statistical system, and even a codification of statistical provisions now in effect would be a major project of legal exploration.

The dependence placed upon statistical data by administrators, both public and private, which has already been asserted, requires no general demonstration here. It may, however, be illustrated. Movements of prices for raw materials are of the utmost significance to industrial executives who are responsible for the purchase of these materials and for sales policies respecting their products. The trends of employment and unemployment, statistically exhibited, can scarcely be neglected in the official budgeting and allocation of funds for unemployment compensation and relief. The statistics of income tax collections for a given period are a necessary foundation for estimates of governmental revenues during ensuing periods. Federal housing agencies must lean upon a variety of figures pertaining to construction, taxation, foreclosures, employment, wages, and realty trends in local communities as a basis for appraising the need and the security for federal housing investments in those communities.

Each administrator is properly voracious for information from any source which will help him to reach a correct solution of the particular problem in hand. At the same time, he is resistant to any relinquishment of control over the mechanism for supplying the statistical information upon which he depends. Especially is this true if relinquishment of control would involve an outsider's use and interpretation of his own office records. Quite apart from questions of confidentiality attached to records, the administrator is likely to feel that only those who are acquainted at first hand with his office problems and materials are in a position to compile authentic and meaningful data, specially suited to his needs. Thus, from the Washington administrator's viewpoint, it would be unrealistic for the Bureau of the Census to compile statistics from tax returns for the administrative purposes of the Bureau of Internal Revenue, or for the Social Security Board to secure and compile financial data from listed corporations for the Securities and Exchanges Commission.

Despite these typical administrative attitudes, the belief is strongly held in many quarters that the key to simplification and improvement of the federal statistical system lies in a policy of centralization, to be brought about by the consolidation of individual agencies. Advocates of statistical centralization, however, seldom analyze the problem for which they offer this panacea. They observe that decentralization results in

considerable duplication of effort. From this they jump to the conclusion that centralization through consolidation of agencies would eliminate the duplication. By this process of thought they overlook or minimize the chief defects of decentralization, which are those of incoherence. This is shown in such forms as the failure of separate agencies to employ a uniform base period in the calculation of economic indexes; inconsistency among agencies in the classification of industrial establishments; lack of synchronism in reporting-periods for similar types of information; and variable practices in respect to technical and work-a-day procedures of many kinds—all of which make for non-comparability among the statistical publications and releases of separate agencies. The consolidation of statistical agencies might lead to the elimination of some fairly obvious duplications of effort among the consolidated units. Even this is doubtful. What appears to the layman as the elimination of duplication may actually be the destruction or impairment of vitally needed sources of information.

In any event, the consolidation of agencies would not automatically produce coherence where this is lacking. Coherence is to be attained only by an item to item adjustment of each task and process to every other related task and process, whether the relationship be one of sequence in operations or one of conceptual congruity. The process of making these adjustments may be termed *coördination.*

The consolidation of existing statistical agencies, therefore, would not in itself constitute a program for the simplification of the federal statistical system. It could more accurately be described as one approach to a program of coördination. In many cases, it would not, in my opinion, be the best approach; for the mere completion of a paper consolidation would tend to obscure the more vital problems that were still to be attacked. Unless it went beyond the paper stage, and assuming that there were no outright deterioration in the quality of the statistics produced, the results of consolidation would appear primarily in the enhancement of overhead costs, counterbalanced by few if any savings at the operating levels. Support for these assertions is supplied by the experience of a number of existing statistical bureaus which have grown to such size that the internal technical and administrative problems of coördination among their separate divisions are now comparable in complexity to those among wholly separate agencies.

If the consolidation of statistical agencies is merely an approach to a program of coördination, this program can equally well be undertaken directly, without sweeping consolidations. Consolidation would be ineffective without coördination, but coördination is possible without consolidation. A direct program of coördination, moreover, will tend to reconcile the interests of administrators and respondents which tend to diverge in a program of consolidation.

The establishment of the Central Statistical Board by executive order in 1933, its continuance under statute in 1935, and its transfer to the Bureau of the Budget in the Executive Office of the President in 1939, all represented a legislative and executive acceptance of the principle of coördination as the primary means for developing coherence in the federal statistical system, while preserving its basic character of decentralization. Back of this New Deal policy were precedents extending through prior administrations, notably the creation of the Central Bureau of Planning and Statistics during the World War and the creation of the Federal Statistics Board in 1931.

In a report on "Returns Made by the Public to the Federal Government," addressed to the President on December 31, 1938, the Central Statistical Board made appropriate reply to the contentions of the Bureau of Efficiency sixteen years earlier that a general centralization of non-administrative statistics in an expanded Bureau of the Census would eliminate the chief defects of a decentralized statistical system. Four general conclusions were reached by the Board, as follows: (1) that the greater number of such returns are necessary to the government, for purposes either of administration or of regulation; (2) that most of the statistics not collected for the purposes stated in (1) are needed for policy-making purposes, or are the result of proper demands from the public for information which cannot be gathered privately; (3) that there is, in general, a clear warrant for the direct collection of information needed for the proper performance of their functions by the several agencies charged with administration or regulation—but that in some cases such information can be adequately secured through other government agencies; and (4) that governmental requirements for reports and returns impose a burden on respondents which is, in part, unnecessary and can to some extent be lightened.

On the basis of these conclusions and its factual findings, the Board presented nine recommendations, the first of which reads as follows: "That it be recognized as sound in principle and necessary in practice that the various statistical and report-collecting services of the federal government be for the most part attached to agencies having administrative or other responsibilities relating to the subjects of the reports; and that, because of this decentralization of the statistical and reporting services, it is essential that there be a statistical coördinating agency with adequate powers."

Other recommendations proposed to cut through the complex maze of statutory enactments by relieving federal agencies of their existing responsibilities for collecting unneeded or duplicating information, and by permitting the use of confidential reports assembled by one agency for the purely statistical purposes of another. It was proposed that the burden of

proof for the collection of duplicating information be placed upon the agency concerned, and that authority be vested in the Chief Executive, after appropriate hearings, to eliminate such duplications as remained. The consideration of technical changes in the federal tax laws and procedures, to remove an especially annoying source of duplicate reporting, was recommended. Steps toward the maintenance of classified address lists of respondents for the common use of all statistical and report-collecting units, thus promoting comparability among their data, were also suggested.

The core of the program recommended by the Board was the gradual evolution of a federal statistical system which may be described as one of decentralized centralization, i.e., one in which there is a concentration of similar work in the agency best equipped to serve the needs of other agencies interested in or operating in its own field. It resulted from a recognition of the fact that the function of statistical coördination is one which may itself, in part, be decentralized. It was proposed, in the first place, that greater responsibilities be assumed by federal statistical agencies themselves for the internal organization and control of their statistical work. This would involve the maintenance by them of uniform records of questionnaires and report forms employed in collecting information and the centralization of responsibilities within them for the authorization of forms. In line with this proposal, a number of federal governmental units have established statistical committees, charged with the review and coördination of all statistical inquiries within the unit.

Of broader scope was the proposal to fix certain intermediate responsibilities for statistical coördination midway between the individual federal agencies and the over-all agency of statistical coördination, i.e., the Central Statistical Board. This would be brought about by the designation of "primary collecting agencies" in "a given field of interest" or with regard to reports "from a given group of respondents." The "primary collecting agency" would presumably be that federal unit having a paramount interest in information from the field or obtainable from the respondents in question. This agency would serve as a report-collecting agent for all other federal units with interests in the same field. All reports from the respondents involved would be channeled through the primary collecting agency, which would thus be given an opportunity to develop continuing, amicable relationships with the respondents and to coördinate a segment of federal statistics at their source.

This program of decentralized centralization and coördination within a decentralized federal statistical system is admittedly one which must be developed gradually if it is to be successful. It must remain flexible at all points and withstand the temptation toward paper achievements not based upon an actual integration of detailed statistical work at operating

levels. We nevertheless believe that it presents a realistic means of obtaining an eventual coherence in the system.

Little has been said in the preceding analysis about the further problem of achieving coherence between federal statistics and statistics from other sources. The question of relationships among the statistics of the federal and state governments is of particular and growing importance. The increasing tendency for each of these levels of government to invade the traditional territory of the other with respect to taxation provides one basis for overlapping reporting requirements. Thus a majority of citizens above exemption levels now have to file similar income tax returns with the federal government and with the government of the state in which they reside. The creation of new federal-state relationships in respect to social security has provided other instances of duplicate reporting, particularly in respect to the employment and pay-roll reports of employers subject to federal and state unemployment compensation statutes.

The principle of coördination, which has already shown its effectiveness among federal statistical agencies, seems also to have applicability to the problems of federal-state relationships. Some federal agencies—for example, several units in the Department of Agriculture, the Bureau of Labor Statistics, and the division of vital statistics in the Bureau of the Census, have developed coöperative agreements with corresponding state and local authorities in accordance with which the latter have collected information that would serve the requirements of these federal agencies as well as their own. They serve as agents for the federal agencies within the state or local jurisdiction in a manner similar to that suggested for the primary collecting agency at the federal level. The continuance of federal-state coöperation along these lines, agency by agency, is to be heartily commended.

There is room, however, for a more generalized mechanism of federal-state statistical coöperation. This would result from the development of agencies of statistical coördination within each of the larger states, whose particular problems of statistical organization are analogous to those of the federal government, even if upon a smaller scale. The usefulness of such agencies has been tested thoroughly by the federal government, especially through the experience of the Central Statistical Board, now happily incorporated in the Bureau of the Budget in the Executive Office of the President. I am inclined to believe that the budget offices of the various states likewise present, in most cases, the preferred location for statistical coördinating functions. The existence of agencies at both federal and state levels for the exercise of these functions would permit a more general and consolidated attack upon many difficult problems involved in the attainment of coherence in the national statistical system.

STUART A. RICE.

Chairman, U. S. Central Statistical Board.

Federal Aid to the States: 1940 Model. In the year 1930, before the Great Depression had unleashed its full fury, federal aid to the states totaled approximately $135,000,000. The highway grants represented more than one-half of this amount, and National Guard payments accounted for another 22 per cent. The number of subsidies did not exceed 11, even if we treat as separate grants the payments for forest fire protection and distribution of nursery stock—both administered by the Forest Service in the Department of Agriculture. Opposition to the principle of grants-in-aid was strong, and had compelled the abandonment of the grant for child hygiene. No uniform federal policy had been established concerning the purposes for which aid should be given, the bases on which it should be apportioned, or the extent to which the federal administering agencies should exercise supervision or control over state activities.

But 1940 marks the beginning of a new decade. The tragic thirties are past, and the full force of their impact on intergovernmental relations can now be observed. It is timely, therefore, to re-examine the system of federal grants-in-aid, and note the more important changes that have occurred. The most obvious fact is the increased use of the subsidy principle. Federal payments to the states have risen more than 300 per cent, and there can be little doubt that the trend will continue for a number of years. Twenty-one separate grants are now made to the state governments from the federal treasury. Even yet, however, there is no general policy of subsidizing all major state activities, or all activities affecting the national interest. Grants are made for some services, rather than others, largely because of variations in the strength and persuasiveness of the several lobbies in the national capital. Opposition to the principle of grants-in-aid seems to have disappeared; members of Congress no longer fill the pages of the *Congressional Record* with dire predictions that state sovereignty will soon be lost unless the federal government abandons its policy of "systematic bribery." But opposition to specific proposals for new federal aid is by no means dead. The perennial bill for a grant in support of general education cannot yet muster a congressional majority. General policies concerning the purposes and technique of federal aid remain unsettled.

In fiscal 1939, the federal government paid to the states a total of $582,519,319. This figure does not include emergency W.P.A. or similar grants, which presumably will die with the official end of the "depression era." It does, however, include payments for the administration of unemployment compensation, although some writers prefer to exclude this grant on the ground that the states are not required to match it.[1] The following table shows the purposes for which grants were made in 1939:

[1] See, for example, Joseph P. Harris' article, "The Future of Federal Grants-in-Aid," in the January, 1940, issue of the *Annals of the American Academy of Political and Social Science*, pp. 14–26.

Federal-Aid Payments to the States for the Fiscal Year 1940

Highways	$161,730,958
National Guard	42,053,582
Vocational education	19,616,000
Vocational rehabilitation	1,820,000
Agricultural extension work	17,821,531
Agricultural experiment stations	6,541,250
Support of agricultural colleges	5,030,000
Forest fire protection	1,972,968
Distribution of nursery stock	88,212
Restoration of wild life	1,000,000
Old age assistance	210,159,949
Unemployment compensation administration	58,812,390
Dependent children	31,466,619
Crippled children	2,997,915
Child welfare	1,520,894
Maternal and child hygiene	3,724,362
Aid to the blind	5,271,609
Public health services	7,985,119
Employment offices	1,950,000
Homes for disabled veterans	709,296
State marine schools	246,665
Total	$582,519,319

The highway grant of approximately $160,000,000, including $20,000,000 for the elimination of grade crossings, is more than double the 1930 figure. Yet its relative importance has been cut in half. Fifty-four per cent of the 1930 total was allotted to road-building; in 1939, the corresponding percentage was 27. The percentage of federal aid assigned to the maintenance of the National Guard dropped from 22 to seven during the period, despite substantially larger appropriations for this purpose. The grant for vocational education has been increased from $7,000,000 to nearly $20,000,000, and federal aid for agricultural extension work has risen from $7,500,000 to almost $18,000,000. Every federally aided state activity—as of 1930—continued to receive federal funds throughout the decade, and every activity was more generously supported in 1939 than in 1930.

But the major increase in federal aid is represented by a series of new grants—most of them falling within the category commonly labeled "social security." Thus the grant for old age assistance, which did not make its appearance until 1936, already represents 35 per cent of all federal aid, and students of the problem are generally agreed that it is likely to go much higher. The payments to the states to cover the cost of administering their unemployment compensation systems amount to another nine per cent. And the grant for dependent children accounts for an additional five per cent. If we put together all the grants-in-aid of the various phases

of social security, we find that they add up to 53 per cent of the total. In other words, they now occupy the dominant position held by highways in 1930.

The following chart indicates the growth of federal aid to the states during the last decade:

The above chart is based only on the regular—presumably permanent—grants-in-aid, and takes no account of emergency grants and loans, which amounted to very substantial figures in the trough of the depression. The addition of W.P.A., P.W.A. and other similar payments to the above figures would bring the total of federal aid, for any one of a number of recent years, close to the eight hundred million mark.

Although the appropriations for highway construction have been substantially increased since 1930, the purposes of the act and the methods of its administration present no new features of striking importance. There are, however, a number of minor changes worth recording. Federal participation, originally limited to $15,000 a mile, is now permitted to a

maximum of $25,000.[2] The original clause limiting federal funds, and also the state funds which matched them, to major highways representing seven per cent of the total state system, has now been modified to allow the use of this money for the development of secondary roads after the primary seven per cent system has been completed, or when it is nearing completion. The approval of the federal supervising agency—now the Public Roads Administration—is, however, required in every instance.[3] Twenty-five states have already taken advantage of this opportunity to improve their secondary roads. Congress has appropriated substantial sums to aid the states in the elimination of hazards at railroad grade crossings. The money is apportioned on approximately the same basis as the highway grants, but the states are not required to match their allotments from the federal treasury.[4] Nor is the letter of the law requiring the matching of the highway subsidy so rigid as in earlier years. Any state that applies the entire proceeds of its motor taxes to highways—including at least 90 per cent to major state and highway systems—may receive its full federal allotment, even if it fails to match federal funds dollar for dollar.[5] Congress has taken part in the animated discussion concerning the advisability of diverting gasoline tax funds to other than highway purposes, and has thrown the weight of its influence against diversion by directing the Public Roads Administration to withhold a portion of any state's allotment if it does not use all the revenue from gasoline taxes, motor vehicle registration and license fees, and the like, exclusively for road construction and maintenance.[6] Two or three states have in fact diverted a part of their highway funds, and have been penalized by a partial loss of federal aid.

In 1936, the George-Deen Act substantially increased the annual grants for vocational education, without altering the general scheme of administration. The existing requirement that federal funds be matched dollar for dollar was temporarily modified to permit the states to adapt their fiscal arrangements to the new—and more generous—federal offer. They might match the federal dollar with 50 cents of their own funds in any year prior to 1943. But in 1943 they must match 60 per cent; in 1944, 70 per cent; and 100 per cent in 1947 and subsequent years.[7] Every state is coöperating with the federal government in its attempt to develop vocational education.

Vocational rehabilitation—the re-education of persons who have been injured in industry or otherwise—has been administered in approximately the same manner since 1930, though added funds have permitted a considerable program of expansion. The Rehabilitation Division of the Federal Security Agency, which has been placed in charge of the rehabili-

[2] 46 *Stat. L.* 141. [3] 47 *Stat. L.* 722. [4] 49 *Stat. L.* 1521.
[5] 52 *Stat. L.* 634. [6] 48 *Stat. L.* 995. [7] 49 *Stat. L.* 1488.

tation program, not only supervises state activities, but also engages in numerous research projects to determine more effective methods of re-education and placement. The Social Security Act, and also the Fair Labor Standards Act, affects the conditions under which disabled persons may be employed; therefore it is necessary for the Rehabilitation Division to maintain close contacts with federal and state agencies administering or dealing directly with these laws. The extension of benefits under the social security program has made possible the assignment of substantially larger numbers of disabled persons to the state rehabilitation departments. Kansas is the only non-coöperating state.[8]

Agricultural extension work, which was highly developed before 1930, is now the beneficiary of substantially larger appropriations. The states are required to match federal funds, as before, except with regard to the additional appropriations (amounting to several millions of dollars annually). The amended law contains two new provisions—80 per cent of agricultural extension funds must be used to pay the salaries of county agents; and these agents must be men and women in "fair and just" proportions.[9]

The Bankhead-Jones Act of 1935 increased by 50 per cent the annual federal grants to the state agricultural experiment stations. The purpose of this additional subsidy was to promote research in agricultural problems—not only the long-recognized problems of production and distribution, but also the matter of new and extended uses for agricultural products. Research projects are proposed by the state experiment stations, according to the usual scheme of federal aid, and are approved by the United States Office of Experiment Stations. Federal agents visit the state stations at regular intervals, and offer advice on a wide variety of matters—accounting procedure, personnel problems, research facilities, and the like. One result of increased federal appropriations has been a larger measure of direct supervision, although the state stations are still very largely free to follow their own desires. The Bankhead-Jones Act also increases the annual grants to the state colleges of agricultural and mechanical arts, without in any way changing the fundamental terms and conditions of the original law.

In 1937, Congress enacted the Wild Life Restoration Act,[10] which specifies that the revenues from the federal tax on firearms, shells, and cartridges[11] shall be paid to the states for the protection and conservation of fish and game. The law follows the traditional pattern of federal aid: the state must formally accept the federal offer; it must have suitable legisla-

[8] Department of the Interior, *Annual Report*, 1939, pp. 128–130.

[9] 49 *Stat. L.* 438. [10] 50 *Stat. L.* 917.

[11] With the exception of five per cent to be retained for the administration of the act and the Migratory Bird Conservation Act.

tion for the protection of wild life; and it must designate an agency to coöperate with the federal government. Conservation projects are formulated by state officers, and submitted for federal approval. Dollar for dollar matching of federal funds is not required, but the federal share of any project may not exceed 75 per cent of the total estimated cost. The basis of apportionment is twofold: one-half is distributed according to area, and the other half according to the number of hunting-license holders. Although this statute was enacted less than three years ago, it has already been accepted by all the states.

When the president of the United States appointed a Committee on Economic Security to study the problems of poverty due to unemployment, old age, and the like, there was considerable diversity of opinion as to the proper method of financing the various aspects of so-called "social security." Should the federal government bear the entire cost, or should it place the full burden on the states? Or should it, perhaps, offer to pay a part of the huge sums that would inevitably be required? With regard to unemployment compensation, the Committee proposed, and Congress agreed, that the states be forced into line through the "federal credit" device—a federal tax on private pay-rolls, only 10 per cent of which should be collected if the remainder went to the states under similar state pay-roll taxes. The immediate result was a vast mass of state legislation establishing systems of unemployment compensation; therefore the federal government has never actually collected the contingent pay-roll taxes authorized by law. It has, however, collected the 10 per cent which may not be credited against state taxes, and the money thus obtained is paid to the states to cover the cost of administering their unemployment insurance systems. Before a state may receive its share of federal funds, it must establish a system containing a number of features designed to insure efficient management: payment must be made solely through public employment offices;[12] fair hearings must be provided for persons whose claims to compensation have been denied; and other measures of a similar nature. But the Social Security Board—the federal administering agency—has no general authority to pass upon the adequacy of state systems. From the outset, however, it has insisted upon the selection of trained state personnel, and has urged that the persons so chosen be given secure tenure. One-third of the coöperating state agencies are now operating—or about to operate—under state civil service laws, and the others must soon follow suit as the result of recently enacted federal legislation.[13]

The ultimate solution of the problem of poverty in old age is a nation-wide retirement system. Such a system has now been established. But it

[12] Or other agencies approved by the Social Security Board.

[13] Social Security Board, *Report*, 1939, pp. 46–74.

has no value for large numbers of aged persons—those who chance to fall in certain exempted groups, or have never earned wages, or have retired before the adoption of the insurance plan. Such men and women must be cared for in some manner. Thirty states had enacted old age pension laws before the federal government entered the picture in 1935, but some of these statutes were virtually inoperative. The number of states providing pensions for aged poor persons is now 48, though the size of the pension varies widely from state to state. The federal government pays one-half of the total cost of approved pension systems, subject only to the limitation that its grant will not exceed $20 a month for any one person.[14] Actual payments have not reached the maximum in any state; in Arkansas, the monthly federal share is as low as three dollars per person receiving old age assistance. The state agency formulates its own pension plan, which must be accepted by the Social Security Board if it includes certain features specified by Congress primarily for the purpose of preventing state discriminations against new residents. The grant to the states for old age assistance introduces a new federal policy, since it makes no attempt to limit total federal liability. The states are not to receive annual grants of any specified amount, but rather one-half of such sums as they may see fit to spend for old age assistance. There is a limit on federal payments *per person*, but not on federal payments *to all persons*. Already the grant for old age assistance represents more than one-third of the total amount of federal aid. And the ever-increasing percentage of old persons in the total population suggests the strong probability of still larger federal grants in the immediate future.

The federal government's social security program includes grants to the states for a number of purposes involving children. Each state is encouraged to make financial provision for children who have been deprived of parental support by death, injury, or other specified causes, and who are living with their mothers or other relatives. Congress has authorized the matching, dollar for dollar,[15] of state payments to such children, with a monthly limit of $18 (as the federal share) for the first child in a family, and $12 apiece for additional children. The state administering agency formulates a plan, as usual, which must be accepted by the Social Security Board if it conforms to a few general specifications. Only 42 states have accepted the federal offer; their monthly payments (including federal funds) range from eight dollars per benefited family in Arkansas to $57 in Massachusetts.[16]

Crippled children, also, come within the scope of federal assistance. An annual grant of $2,850,000—later increased to $3,870,000—is made

[14] Prior to January 1, 1940, the federal maximum was $15 per person.

[15] Until 1939, the federal government would pay only one-third of the total outlay for dependent children. [16] Social Security Board, *Report*, 1939, pp. 95–99.

to the states to enable them to extend and improve their facilities for locating crippled children, and for providing necessary medical, surgical, and other corrective facilities, "especially in rural areas and areas suffering from severe economic distress."[17] Every state accepting the federal offer, and meeting the conditions imposed by law, receives an annual allotment of $20,000; the remainder of the grant is apportioned by the Secretary of Labor, largely on the basis of "the financial need of each state for assistance in carrying out its plan." All 48 states are coöperating with the federal government.

A comparatively small grant ($1,500,000 a year) is made to the states to enable them to extend and strengthen their welfare services for the protection and care of homeless, dependent, and neglected children who are in danger of becoming delinquent. Each state receives $10,000; the remainder is apportioned with regard to (though not strictly on the basis of) rural population. Federal funds need not be matched. The Children's Bureau, which administers the federal grant and approves state plans, issued a statement of training policies in 1937, and this statement has been followed generally by the states in making their arrangements for training personnel. Wyoming is the only state that has no federally-aided child welfare plan. Most of the state governments have now established separate child welfare divisions within their welfare agencies.

In 1921, when the federal government first offered to subsidize state services for maternal and child health, only a few state health departments were maintaining such services on an extensive scale. But the federal grant caused the state governments to develop sudden interest in child hygiene, and most of them soon made provision for reasonably adequate programs. Even the abandonment of the field by the federal government in 1929, as a result of the concentrated efforts of the opponents of the subsidy system, did not cause a return to earlier conditions. A few states even replaced federal money with their own funds. But some child hygiene activities were necessarily discontinued, while others were restricted. Then, in 1935, the federal government again entered the picture with an annual grant which has since been increased to nearly four million dollars. Each state receives $20,000; two-thirds of the remainder is apportioned among the states on the basis of live births; and the other third is allotted "according to the financial needs of each state for assistance in carrying out the state plan, as determined by the Secretary of Labor after taking into consideration the number of live births in each state."[18] State financial participation is required, though not necessarily dollar-for-dollar matching. Only 36 states were able to match in full in 1937, but by 1939 the number increased to 46, with all the states coöperating throughout the period. The clauses of the law with regard to federal

[17] 49 *Stat. L.* 631. [18] 49 *Stat. L.* 629.

supervision and control of state activities are much stronger than in the act of 1921. Provision is made even for the establishment and maintenance of state personnel standards on a merit basis.

Federal aid to the states for the support of needy blind persons follows closely the pattern of the grant for old age assistance. The state agencies prepare plans for this activity, taking care to respect a few simple limitations imposed by Congress: for example, the residence requirement must not bar persons who have resided in the state at least five of the nine years immediately preceding their applications, including the year immediately past. Every state plan must provide for some state financial participation. Federal payments have, in fact, almost exactly equaled the appropriations from state and local treasuries. Only 40 of the states are coöperating with the federal government in aid to the blind. The extent of federal participation varies widely—as with other grants of this type; in some states, it is less than four dollars per benefited person, while in others it exceeds $20.[19]

In 1935, Congress made provision for a substantial annual grant to the states, to aid in the establishment and maintenance of adequate public health services.[20] The United States Public Health Service promptly opened five regional offices for the purpose of coöperating with state and local officials, placing special emphasis on sanitary engineering, venereal disease control, and public health nursing. The states were not required to match federal funds, and all promptly accepted the federal offer. Marked progress has already been made in the brief period since the federal government entered the field. The number of counties employing full-time health officers with medical training has more than doubled. State and local appropriations for health work have increased sharply. And large numbers of persons have been trained for positions in public health departments.[21] Federal funds are allotted to the several states by the Surgeon-General, with the approval of the Secretary of the Treasury, on a threefold basis: (1) population, (2) special health problems, (3) financial needs. No statutory formula has been set up for determining financial needs. In 1938, the public health subsidy was augmented by a separate grant for coöperative work in the prevention, treatment, and control of venereal diseases.[22] The immediate expansion of venereal disease control activities in all the states created a temporary shortage of adequately trained personnel, but the Public Health Service is working with the states to correct this situation.

All the states are coöperating with the federal government to maintain a national system of employment offices.[23] The federal grant for this

[19] Social Security Board, *Report*, 1939, pp. 99–103. [20] 49 *Stat. L.* 634.
[21] U. S. Surgeon-General, *Report*, 1939, pp. 22–33.
[22] 52 *Stat. L.* 439. [23] 48 *Stat. L.* 113; 52 *Stat. L.* 1244.

purpose is apportioned on a population basis, but with the proviso that no state shall receive less than $10,000 a year. Federal funds must be matched dollar for dollar. State plans must be based on the minimum standards of efficiency devised by the director of the Federal Security Agency, and must recognize the merit system in the selection of state personnel.

The remaining federal grants-in-aid—for forest fire protection, distribution of nursery stock, support of state homes for disabled soldiers and sailors, and maintenance of state marine schools—scarcely deserve separate mention. All were set up before 1930, and have not since been altered in any important particular. They involve small sums. And the grant for marine schools is made to but four states.[24]

Here, then, is the picture of federal aid to the states, as it must be sketched in 1940. It shows no clear tendencies, except the inevitable one to grow larger. The states secured less than 10 per cent of their current revenues from the federal government in 1931; in 1939, they obtained approximately 15 per cent from this source. And, in the meantime, no serious effort has been made to solve the major administrative or fiscal problems created by a system of grants-in-aid. No federal agency has attempted to study the present division of powers between the nation and the states, and to determine which public activities should properly be brought within the scope of the subsidy system. No serious effort has been made to evolve a satisfactory basis for apportioning federal funds. Population continues to be a favorite basis, although sometimes in modified form—for example, the number of live births. A few of the smaller grants are apportioned, at least in part, on the basis of need, as determined by the federal administering agency. But how can need be measured with any degree of accuracy? Not merely by determining the number of acres of forests requiring fire protection or the number of crippled children lacking proper medical care, but also by ascertaining the financial ability of the several states to support these services. And what is the test of financial ability? Income or wealth, to the extent that these factors can be accurately determined? In part, no doubt. But it must not be forgotten that the financial ability of a state to support any given service depends in large measure upon the quantity and quality of other services demanding a share of the tax dollar. And no two states are performing exactly the same services in exactly the same manner.

To complicate the problem still further: What is the purpose of the federal grants to the states? Does Congress desire to equalize, at least in part, the inequalities that now exist among the several commonwealths? Some of the grants have exactly the opposite effect. They take from the poor and give to the rich. They provide for federal matching of state

[24] California, Massachusetts, New York, and Pennsylvania.

appropriations, and thus—under the guise of "rewarding effort"—pour large sums of federal money into state treasuries that are already comparatively well filled. It may be that one of the purposes of federal aid is to raise state administrative standards. Something has already been accomplished in this regard. Yet many of the subsidy laws—especially the oldest and the most recent—specifically prohibit the federal administering agencies from exercising adequate control over state activities. The truth of the matter is that no settled policy exists. Lack of careful planning was less important when the grants-in-aid totaled less than $150,000,000 a year. Now that grants have risen to four times that sum, with every prospect of going still higher, the need for a fixed and logical policy is becoming increasingly urgent.

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Direct Primary Legislation, 1936–1939.[1] The passage of mandatory, state-wide, direct primary laws in Utah and New Mexico within the last four years leaves only two states which retain the convention method of making nominations for all state offices.

The Utah act of 1937 applies to all national, state, and local officers.[2] Any party which polled two per cent of the total vote cast for representative in Congress at the last election, or which files a petition signed by at least 500 qualified electors, comes within its scope.[3] The second Tuesday of September is fixed as the date of the primary, with a second, or "run-off," primary in those cases in which no candidate receives a majority in the first primary.[4] The primary is open, candidates for the nominations of all parties appearing in party columns on a "blanket" ballot with perforations between the columns. After marking his ballot, the voter detaches the used portion and deposits it in the ballot box. A separate box is provided for unused portions.[5] Names may be placed upon the ballot by petition or declaration of candidacy, and are rotated.[6] State committees and delegates to the national conventions are chosen at state conventions held on or before the last Saturday in June. The platform is drafted by a second convention meeting in September.[7]

[1] This note covers the regular and special sessions of 1936–1939, inclusive. Information about 1939 changes in Alabama and New Jersey was incomplete. In a few other cases the 1939 session laws were not available at the time when this note was prepared, and the information given here is based upon reports from legislative reference bureaus. The writer wishes to take this opportunity to thank the Social Law Library of Boston and the legislative reference services of the various states for assistance in assembling this material.

[2] *Laws of Utah*, 1937, ch. 29, sec. 5, p. 57. [3] *Ibid.*, sec. 3, p. 56.

[4] *Ibid.*, sec. 6, p. 57. [5] *Ibid.*, sec. 24, p. 60.

[6] *Ibid.*, secs. 13–16 and 25, pp. 58–59 and 61. [7] *Ibid.*, sec. 39.

The New Mexico law contains no novel features. It applies to those parties which polled at least 15 per cent of the total vote for governor at the last general election and to nominations for national, state, county, and precinct officers.[8] The date is the second Saturday in September.[9] A candidate must file a personal declaration of candidacy and a petition signed by from five to 500 qualified voters (depending upon the office), and pay a fee equal to three per cent of the first year's salary of the office sought.[10] Names appear upon the ballot in the order in which declarations of candidacy are filed.[11] The primary is closed, and the 1939 registration law provides for party enrollment.[12] A plurality vote is sufficient to nominate.[13]

Connecticut and Rhode Island, the only two states which retain the convention method, have appointed bi-partisan commissions to study their own nominating processes and those of other states.[14] The election laws of California, Minnesota, and Pennsylvania have been codified without making important changes in the nominating process.[15]

The past four years have seen few significant developments in the field of presidential primary legislation. No states have repealed their laws, although Oregon's so-called "September Primary" Act, which would repeal the presidential primary and change the date of the state primary from May to September, was blocked only by a referendum petition. The proposition will not be voted upon until November, 1940.[16] According to the *New Republic*, the act was passed by the Garner group in the Democratic party, who thought they would have "a better chance with the politicians than with the people," and the referendum was invoked by such liberal groups as the State Grange and the American Federation of Labor.[17] It will be remembered that this same law was repealed by the legislature in 1935 but was overwhelmingly upheld at a referendum election.[18] Whether or not the enemies of the presidential primary will be more successful in this instance remains to be seen. In any case, however, Oregon will elect its delegates to the 1940 conventions at presidential primaries.

Arkansas has placed upon its statute-book a fantastic, optional, presi-

[8] *Session Laws of New Mexico*, special session of 1938, ch. 2, secs. 4 and 5, p. 4.
[9] *Ibid.*, sec. 7, p. 5. [10] *Ibid.*, secs. 9 and 10, pp. 6–8.
[11] *Ibid.*, sec. 11, pp. 8–9.
[12] *Session Laws of New Mexico*, 1939, ch. 152, sec. 38, p. 300.
[13] *Ibid.*, special session of 1938, ch. 2, sec. 15, p. 11.
[14] *General Statutes of Connecticut*, 1939, Special Act 544; *Acts and Resolves of Rhode Island*, Joint Resolutions 78 and 79.
[15] *Statutes of California*, 1939, ch. 26; *Laws of Minnesota*, 1939, ch. 345; *Laws of the General Assembly of Pennsylvania*, 1937, No. 320.
[16] *Oregon Laws*, 1939, ch. 360. [17] July 12, 1939.
[18] See note in this REVIEW, Vol. 30 (April, 1936), p. 279.

dential preference law which is not likely to be used. It is the duty of the party state committee, when petitioned to do so by "any citizen of the United States who is otherwise qualified to occupy the office of President of the United States," to provide for a presidential preference vote. The petition must be signed by the candidate in person and be filed with the committee at least six months prior to the date of the national convention.[19] If such a preference vote is taken, it becomes the duty of the delegates to cast their votes as a unit for the candidate unless he "shall die, withdraw, or according to the best judgment of two-thirds of the delegates after arrival at the convention be so lacking in other support that his nomination is impossible and that to cast the vote of the delegation for him would be futile and contrary to the best interests of this state."[20] The joker in this piece of legislation is that the candidates must bear the cost of the primary, and no one is likely to take the initiative in asking for a preference vote which might cost him $50,000 to $75,000 if he were the only candidate.[21] West Virginia has wisely dropped from her law the requirement that a candidate for delegate must file a statement saying whether he will or will not support the popular preference for president.[22] Massachusetts made provision for a special presidential preference vote in 1936. No names were printed on the ballot and voters were required to write in the names of their favorites.[23]

The elimination of all tests of party affiliation from the laws of Idaho, Michigan, and North Dakota, as well as the new Utah law mentioned above, indicates a significant trend in the direction of the "open" primary. The Idaho and North Dakota laws provide for a "blanket" ballot like that used in Minnesota, while Michigan and Utah follow the Wisconsin plan of separate ballots.[24] In 1939, the Michigan law was amended to require the rotation of the different party ballots so that each party ticket will appear on top an equal number of times.[25] An amendment in South Carolina gives the party state convention express power to add to, or to limit, the qualifications for voting at the primary.[26] North Carolina has repealed its provisions for absentee voting in primaries, and has restricted the use of assistance to voters in marking primary ballots.[27]

[19] *Acts of Arkansas*, 1939, ch. 103, p. 214. [20] *Idem.*

[21] For this information, the writer is indebted to Professor Robert A. Leflar, of the University of Arkansas School of Law, and Mr. Osro Cobb, chairman of the Arkansas Republican State Committee.

[22] *Acts of the West Virginia Legislature*, 1939, ch. 58, p. 304.

[23] *Acts and Resolves of Massachusetts*, 1939, ch. 104, p. 116.

[24] *Idaho Session Laws*, 1937, ch. 54, p. 69; *Laws of North Dakota*, 1939, ch. 139, p. 215; *Public and Local Acts of Michigan*, 1937, No. 37, p. 46; *Laws of Utah*, 1937 ch. 29, p. 56. [25] *Public and Local Acts of Michigan*, 1939, No. 63, p. 117.

[26] *Acts and Joint Resolutions of South Carolina*, 1938, No. 847, p. 1742.

[27] *Public Laws of North Carolina*, 1939, ch. 159, p. 390; ch. 352, p. 758.

Minor changes in the applicability of the direct primary to local units have been made in Massachusetts, Minnesota, New York, North Carolina, and South Carolina.[28]

Louisiana has returned to the practice of holding a special September primary for nominations for United States senator and representative in Congress,[29] and Minnesota has changed the date of the state-wide primary from June to September.[30] Minor changes in date have been made by Alabama, Michigan, North Carolina, North Dakota, and Utah.[31]

In a number of cases the laws have been amended to require candidates to be *bona fide* members of the parties whose nominations they seek. In Colorado, no person is eligible for designation as the candidate of a party unless he has been an enrolled member of that party for a year; in Massachusetts, the registrar of voters must certify that a candidate is enrolled as a member of the party whose nomination he seeks; and in Florida the candidate must swear that he has not been enrolled as a member of any other party for at least two years past, and that he will vote for all the nominees of that party at the next succeeding general election.[32] A candidate who is defeated in the primary is ineligible to run for the same office at the ensuing general election in North Dakota,[33] and in New Mexico a candidate who is defeated in the primary may not have his name appear upon the general election ballot under the party emblem of any other party.[34] Minor changes, too numerous to list, have been made in the provisions governing declarations of candidacy, nominating petitions, and fees of those qualifying in primary elections.

The Massachusetts pre-primary convention law, adopted in 1932, failed to bring about the party "leadership" and "harmony" which its

[28] *Acts and Resolves of Massachusetts*, 1938, ch. 76, p. 52 (City of Medford); *Laws of Minnesota*, 1937, ch. 342, p. 461, and 1939, ch. 86, p. 127 (school districts); *Laws of New York*, 1938, ch. 435 (villages of the first class); *Public Laws of North Carolina*, 1937, chs. 263, 264, and 423, and 1939, chs. 78, 80, 105, 141 (certain counties); *Acts and Joint Resolutions of South Carolina*, 1936, Nos. 635 (Brookland) and No. 746 (city of Rock Hill).

[29] *Acts of Louisiana*, 1938, No. 396.

[30] *Session Laws of Minnesota*, 1939, ch. 345, Part III, sec. 1, p. 546.

[31] *General Laws of Alabama*, 1939, No. 529 (run-off primary to be fourth Tuesday after the first primary); *Public and Local Acts of Michigan*, 1939, No. 172, p. 332 (city primaries to be held third Monday in February); *Public Laws of North Carolina*, 1939, ch. 196, p. 444 (date of state primary changed from first Saturday in June to last Saturday in May); *Laws of North Dakota*, 1937, ch. 130 (state primary changed from last Wednesday to last Tuesday in June); *Laws of Utah*, 1939, ch. 37, p. 46 (date of first primary changed from second to first Tuesday in September and date of second primary from fourth Tuesday in September to first Tuesday in October).

[32] *Session Laws of Colorado*, 1939, ch. 103, p. 332; *Acts and Resolves of Massachusetts*, 1938, ch. 272, p. 242; *General Laws of Florida*, 1939, ch. 19663, p. 1614.

[33] *Laws of North Dakota*, 1939, ch. 141, p. 217.

[34] *Session Laws of New Mexico*, 1939, ch. 152, p. 287.

sponsors hoped for, and was repealed in 1937. The repeal act, which revived all provisions of law "as they existed immediately prior to such striking out or amendment, subject, however, to all subsequent amendments not relating to such primaries or conventions all of which subsequent amendments are hereby continued in force,"[35] raised numerous vexing problems of interpretation which had to be cleared up by a series of subsequent amendments.[36]

The provision for rotation of names of candidates on the ballot, included in the original Utah law, has been dropped. Hereafter the order will be alphabetical.[37] Indiana, on the other hand, now requires rotation of names wherever there are two or more candidates for nomination for the same office.[38] Incumbents of elected offices in Massachusetts now have the advantage of having their names appear first on the primary election ballot, the names of other candidates following in alphabetical order.[39]

The "run-off," or second, primary continues to be a political football. Nowhere has this been more true than in Arkansas, which adopted it in 1933, repealed it in 1935, and in 1939, in compliance with the provisions of an amendment to the state constitution passed by popular initiative, readopted it once more.[40] But the end is not yet; another constitutional amendment, repealing that part of the earlier amendment requiring the "run-off" primary, is to be voted on at the election in November, 1940, and in anticipation of its passage the application of the 1939 act was limited to the primary of 1940.[41] Two other states—Kentucky and Oklahoma—have repealed their "run-off" primary laws after brief trials.[42] Maryland, the one state which has clung to second choice voting, has finally abandoned the plan. The actual nominations continue to be made by the state conventions, delegates being bound to vote for the candidates who have received the highest number of preference votes in their

[35] *Acts and Resolves of Massachusetts*, 1937, ch. 384, p. 430.

[36] *Ibid.*, 1938, ch. 473, p. 597. [37] *Laws of Utah*, 1939, ch. 37, p. 50.

[38] *Acts of Indiana*, 1937, ch. 266, p. 1245. Formerly, names were rotated only where there were four or more candidates for nomination for the same office.

[39] *Acts and Resolves of Massachusetts*, 1938, ch. 436, p. 488.

[40] *Acts of Arkansas*, 1939, Act 372, p. 979. Constitutional amendment No. 29 was adopted by a vote of 63,414 to 56,947 at the election of November 8, 1938.

[41] *Idem.* The proposed constitutional amendment is H. J. Resolution No. 16, p. 1104 of the *Acts of Arkansas*, 1939. If the voters refuse to perform as expected, another "run-off" primary act will have to be passed. The writer is indebted to Professor Robert A. Leflar, of the University of Arkansas School of Law, for assistance in untangling this chapter of legislative history. According to Professor Leflar, members of the legislature felt that the "run-off" primary feature of the 1938 amendment was in a sense "slipped over" on an unsuspecting public.

[42] *Acts of the General Assembly of Kentucky*, 1936, ch. 52, p. 149, repealing the law of 1935; *Session Laws of Oklahoma*, 1937, ch. 29, Art. II, sec. 2, p. 136, repealing the law of 1929.

respective counties or legislative districts.[43] In 1937, Tennessee adopted an elaborate "county unit" plan for determining nominees for those offices filled by vote of the state at large, only to repeal it in 1939.[44]

The non-partisan primary marches on. South Dakota and Washington have extended this method of nomination to superintendent of public instruction and county superintendents of schools, and in Oregon it is now used for superintendent of public instruction as well as county superintendents.[45] Certain towns and villages in Wisconsin have been authorized to nominate candidates at non-partisan primaries.[46]

Some of the recent regulations applying to new parties and independent nominations are likely to make the rôle of political minorities more difficult than heretofore. In California, a petition to form a new party must hereafter be signed by a number of voters equal to ten per cent of the entire vote at the last election at which a governor was chosen,[47] and in Oregon the number of signers of such a petition must equal five per cent of the total vote for all candidates for representative in Congress.[48] In Massachusetts, the number of signatures on independent nomination papers was increased to three per cent.[49] This would have applied, also, to minority party groups, thus making it practically impossible for them to gain a place on the ballot, had not a subsequent enactment expressly provided that parties which at the three preceding biennial elections have cast a number of votes for governor equal to one-tenth of one per cent of the total number of ballots cast may nominate candidates at a caucus or convention.[50] An amendment in Michigan makes it necessary for a new party to file a petition signed by a number of voters equal to from one to four per cent of the number of votes received by the successful candidate for secretary of state in the last election.[51] Washington has adopted very liberal provisions for nominations by new parties and those which do not come under the provisions of the direct primary law. They may be made at conventions attended by at least 25 registered voters. Certain rules are laid down for the calling and conduct of the conventions. Certificates of nomination must be signed by the presiding officer of the convention, the secretary, and 25 registered voters present. Can-

[43] *Public Laws of Maryland*, 1939, No. 201.

[44] *Public and Private Acts of Tennessee*, second extra session, 1937, ch. 2; *Ibid.*, 1939, ch. 2, p. 16.

[45] *Session Laws of South Dakota*, 1937, ch. 122, p. 148; *Laws of Washington*, 1939, ch. 1, p. 3; *Oregon Laws*, 1939, ch. 351, p. 655.

[46] *Laws of Wisconsin*, 1937, ch. 336; 1939, ch. 454.

[47] *Statutes of California*, 1937, ch. 398.

[48] *Oregon Laws*, 1937, ch. 93, p. 125.

[49] *Acts and Resolves of Massachusetts*, 1939, ch. 191, p. 172.

[50] *Ibid.*, cn. 371, p. 429.

[51] *Public and Local Acts of Michigan*, 1939, No. 262, p. 482.

didates so nominated must file declarations of candidacy and pay the fees prescribed for candidates who are subject to the direct primary law.[52] Wisconsin has increased the minimum number of signatures required on independent nomination papers.[53]

Women are rapidly gaining equal representation on party committees. During the past four years, California, Kansas, Massachusetts, New York, Oregon, South Dakota, Texas, Vermont, Washington, and Wyoming have accorded women equal representation on some or all party committees.[54] Hereafter, party district committees in Rhode Island are to be elected.[55] In Massachusetts, upon petition of 50 enrolled party voters of a senatorial district, the chairman of the state committee must call a convention of ward and town committees in that senatorial district for the purpose of endorsing candidates for nomination to membership on the state committee.[56]

Vermont has made important changes in the composition of its state convention. Hereafter members of the national, state, and county committees and a certain number of other members (not to exceed 12) selected by the state committee, as well as nominees of the party for state offices, are to sit in the convention.[57]

New Mexico's new direct primary law requires post-primary reports of the expenditures of all candidates for nomination. Candidates for United States senator may not spend more than $3,500, but expenditures for stationery, postage, printing, and necessary traveling and subsistence are excepted from this limitation.[58] In Georgia, the corrupt practices act has been extended to primaries as well as general elections.[59] A valuable addition to the Massachusetts law is the requirement that the addresses as well as the names of contributors shall be filed.[60] A provision which seems to be directed at labor organizations is an Oregon amendment requiring associations, whether incorporated or not, which make expenditures or contributions for political purposes to include the amount of all receipts from special assessments in their reports and to list the source of each

[52] *Laws of Washington*, 1937, ch. 94, p. 383.

[53] *Laws of Wisconsin*, 1937, ch. 66.

[54] *Statutes of California*, 1937, ch. 407; *Session Laws of Kansas*, 1937, ch. 224; *Acts and Resolves of Massachusetts*, 1939, ch. 346, p. 320; *Laws of New York*, 1939, ch. 847, p. 2147; *Oregon Laws*, 1937, ch.104, p. 138 and 1939, ch. 131, p. 285; *Session Laws of South Dakota*, 1937, ch. 120, p. 144; *General Laws of Texas, 45th Legislature*, 1937, Senate Bill 153, and *46th Legislature*, 1939, Senate Bill 177; *Acts and Resolves of Vermont*, 1937, No. 6; *Laws of Washington*, 1939, ch. 48, p. 153; *Session Laws of Wyoming*, 1939, ch. 45, p. 51.

[55] *Public Laws of Rhode Island*, 1938, ch. 2640.

[56] *Acts and Resolves of Massachusetts*, 1938, ch. 397, p. 448.

[57] *Acts and Resolves of Vermont*, 1939, No. 3, p. 4.

[58] *Session Laws of New Mexico*, special session, 1938, ch. 2, secs. 23–25, pp. 14–15.

[59] *Acts and Resolutions of Georgia*, 1939, No. 180, p. 309.

[60] *Acts and Resolves of Massachusetts*, 1939, ch. 223, p. 197.

contribution of five dollars or more.[61] Alabama and Wisconsin have somewhat liberalized the purposes for which money may be spent in primaries, and Texas has raised the amounts which may be spent in certain counties.[62] More stringent regulation of the posting and circulation of campaign literature in and near polling places on election day have been adopted by Maine.[63] Indiana and New York have prohibited the insertion in pay envelopes of material intended to influence political opinions.[64]

In Indiana and Tennessee, the use of voting machines has been extended to primary elections, and in Rhode Island they may now be used in caucuses.[65]

In the two remaining convention states—Connecticut and Rhode Island—direct primary laws were introduced in 1939, but defeated. Whether this method of nomination will be recommended by the committees now investigating the subject in these states remains to be seen. Undaunted by the repeal of the Massachusetts pre-primary convention, similar proposals were seriously considered in Maine, Nebraska, Ohio, and Wisconsin in 1939. Among the other defeated bills was one providing for open primaries in Illinois, a "run-off" primary proposal in Maine, and an elaborate "decimal unit" plan in Wisconsin. In its emphasis upon policies, the last proposal is reminiscent of the Richard's law of South Dakota.[66]

Glancing back at the legislative grist of the last four years, few significant trends emerge. The state-wide, direct primary has gained ground, partly because of the absence of a satisfactory substitute; presidential primaries have neither lost nor gained ground; there has been a striking shift in the direction of "open" primaries; the spread of the non-partisan idea has continued; the "run-off" primary continues to be a bone of contention, especially in the South. For the most part, however, the changes noted fall into the class of "tidying up," and are neither fundamental nor novel.

LOUISE OVERACKER.

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State Constitutional Amendments in 1938–1939. Of the 203 different proposals voted upon in 36 states during the 1938 elections, 154 were constitutional amendments.[1] Ninety-seven amendments, or 63 per cent

[61] *Oregon Laws*, 1939, ch. 475, sec. 1, p. 929.

[62] *General and Local Acts of Alabama*, extra session, 1936–37, No. 33, p. 30; *Laws of Wisconsin*, 1937, ch. 101; *General Laws of Texas, 45th Legislature*, 1937, House Bill 1021. [63] *Public Laws of Maine*, 1939, ch. 23.

[64] *Acts of Indiana*, 1937, ch. 44, p. 275; *Laws of New York*, 1937, ch. 835.

[65] *Acts of Indiana*, 1939, ch. 113, p. 559; *Public Acts of Tennessee*, 1937, ch. 159, p. 620; *Public Laws of Rhode Island*, 1938, ch. 2640.

[66] Assembly Bill No. 506A, introduced March 17, 1939, by request of Mr. Nortman.

[1] No proposals were submitted in Connecticut, Delaware, Indiana, Iowa, Kansas, Kentucky, Mississippi, New Jersey, Pennsylvania, Vermont, Virginia, and Wisconsin.

of the number submitted, were approved by the voters. Louisiana, with 28 amendments, led the states in the number of proposals submitted; Georgia followed closely with 23 and California with 19. Nearly one-half of the total number of amendments were considered by these three states. In the following description of amendments accepted, no attempt has been made to list the great variety of local municipal proposals on the ballots in Louisiana, Georgia, and South Carolina.

Pensions and Public Welfare. California adopted an amendment granting plenary power to the legislature to provide for administration of relief as well as authority to reimburse counties for aid given. New York approved a precedent-setting amendment permitting the use of state money and credit for social welfare, "including provision, by insurance or otherwise, against the hazards of unemployment, sickness, and old age"; while Missouri broadened its constitution by adopting an amendment authorizing its legislature to grant pensions or assistance to persons over 65 years of age. Of minor interest was Louisiana's adoption of an amendment abolishing the board of charities and corrections. A New Hampshire measure withholding from paupers the right to vote was beaten by the close vote of 57,289 to 53,671.

Taxation and Finance. Arkansas adopted an amendment permitting the exemption of new manufacturing establishments or additions to existing plants from taxation for a period not to exceed ten years. On the other hand, Louisiana put a three-year limit on the authority of the state board of commerce and industry to contract with owners of manufacturing establishments for tax exemptions. Such tax exemptions are still restricted to ten years, but the authority of the board is now limited. Louisiana also restricted to $300,000 bond issues and to four mills special assessments for the erection and maintenance of industrial plants processing farm products in local districts.

Amendments adopted in California and New Hampshire require motor vehicle fuel tax moneys and license fees to be used exclusively for public street and highway purposes, and in Michigan license plate taxes paid by motorists must be used only for highways and streets.

A five-thousand-dollar homestead exemption proposal was adopted in Florida, and new improvements upon homesteads were exempted from taxes in Louisiana for three years. Homesteads in that state are exempt up to $4,000 value from seizure and tax sale. Homestead exemption measures were defeated in Arizona and California.

Among the several proposals in Louisiana having to do with bond issues was one funding issue of $5,000,000 covering construction of highways, and another which excluded refunding bonds for subdivisions from the ten per cent limit. Another excluded road, drainage, irrigation, and school district bonds from the ten per cent limit.

New York authorized creation of a state debt of $300,000,000 and ex-

panded the city debt limit by two per cent for slum clearance and low-cost housing. It also excluded from debt limit $315,000,000 for unification of New York City's transit facilities. Lengthy provisions modernizing Articles VII and VIII of the constitution relating to state and local finances were approved by the electorate.

South Carolina adopted an amendment abolishing the levying of a state-wide property tax for school purposes and approved a number of other local proposals.

Some twenty-three proposals relating to bonded debts and taxes of Georgia counties were adopted. Among these were proposals delegating to any county the right to levy a tax for medical care for indigent sick, as well as proposals permitting counties to levy taxes to provide forest-fire protection. Among important tax proposals defeated were measures on the ballots in California and Maryland providing for a state income tax. Other action taken included the reduction of the severance tax on Louisiana sulphur from $2.00 a ton to $1.03, and the approval of a California amendment putting a 2.6 per cent tax on insurance premiums.

Legislative and Public Officers. Outstanding in this field was Massachusetts' action in amending its constitution, by a vote of 748,030 to 417,134, to provide for biennial sessions of the General Court as well as for a biennial budget.

Amendments were adopted in Arizona and North Dakota providing that members of the legislature shall not be eligible for public appointment during their terms of office. By the close vote of 24,278 to 25,050, the electorate in Arizona defeated a measure to make appointive state officers' terms coterminous with that of the governor. Reapportionment proposals failed in South Dakota and Oklahoma, and in North Dakota governmental reforms providing for state civil service and a county-manager form of government met the same fate.

Arkansas adopted an amendment abolishing special elections and providing that vacancies in the office of United States senator and all other elective offices, except those of lieutenant-governor, members of the General Assembly, or representatives in Congress, be filled by appointment of the governor.

California adopted an amendment providing that propositions providing petitions proposing a law or amendment to the constitution shall be filed with the secretary of state at least 130 days before the election instead of 90 days as in the past. The additional 40 days gives the secretary of state more time to check petitions and the state printer time to print several million pamphlets for the electors.

Louisiana approved an amendment altering two senatorial election districts (specifies parishes from which senators shall be elected).

An amendment was adopted in Montana changing qualifications and

terms of office of county officials from two to four years, and North Carolina increased the terms of office of sheriffs and coroners to four years. An interesting situation occurred in Idaho, where the legislature passed the resolutions placing two constitutional amendments on the ballot, but failed to appropriate funds for publication of the amendments in one paper in each county as required by law. The measures which did not come to a vote proposed suffrage rights for Indians and that state officials take office on December 1 rather than January 1.

Maine passed an amendment lengthening the residence classification period for voters from three to six months.

Oregon approved an amendment giving the governor 20 days instead of five, after final adjournment of the legislature, to consider and approve or veto bills.

Labor. Arkansas amended its constitution so as to permit the legislature to enact workmen's compensation laws. New York's amended constitution provides for a forty-hour week for those employed on public works, and that the prevailing wage must be paid. It also gives employees the right to organize and to bargain collectively through representatives of their own choosing; and, more important, Article I, Section 17, now declares that "labor of human beings is not a commodity nor an article of commerce and shall never be so considered or construed."

Local Government. Arkansas adopted an amendment granting additional powers to counties to construct court-houses, jails, and hospitals, while nearly a dozen amendments covering such local matters as regulation and taxation of parish juvenile courts, water-boards, schools, jails, naming of bridges, and garbage districts were approved in Louisiana.

Judicial. Of considerable public interest in North Carolina was the adoption, by a vote of 172,583 to 145,103, of an amendment providing for the establishment of a department of justice.

A constitutional amendment was adopted in Arkansas providing that judges of the chancery courts shall also preside over probate courts, and an amendment for the handling of appeals from the probate court to the supreme court was approved. An amendment was adopted also providing that the Arkansas supreme court shall make rules regulating practice of law and the conduct of attorneys.

A California constitutional amendment was approved which provided for removal of judges upon conviction of crime, and in Louisiana amendments were passed extending retirement provisions to a number of additional courts and reducing the age limit from 70 to 65 years.

Maryland adopted an amendment providing for an additional judge for the circuit court, and New Mexico accepted an amendment permitting a supreme court justice to try cases when no district judge is available.

Schools. An amendment was adopted in Florida stipulating that the

legislature shall provide for raising revenue to defray state appropriations for a uniform system of public schools and state institutions of higher learning. Utah created a permanent uniform school fund; and a provision in Montana was adopted further amending constitutional provisions relating to the investment and administration of public school funds. Nevada repealed existing limitation on taxes levied for school purposes.

Conservation. An amendment was approved in Minnesota, by an overwhelming vote of 609,046 to 259,007, authorizing the exchange of public lands of the state for lands of the United States and other privately owned lands. This was rejected in the 1936 elections.

Banks. A constitutional amendment repealing so-called double liability on bank stockholders, and repealing a provision requiring submission of all banking legislation to the public for approval, was rejected in Illinois. A similar amendment was passed in Nebraska. A constitutional amendment providing for payment of the same rate of interest on state funds as on private deposits, by banks acting as state depositories, was adopted in Wyoming.

Conclusion. In general, the amendments considered were run-of-the-mine proposals and attracted little attention. National interest seemed to be centered on initiative measures approved in Oregon and rejected in Washington which would stringently regulate picketing and boycotting by labor organizations. The fact that constitutional conventions were held in New York and New Hampshire is also worthy of comment. The definite accomplishments of the New York convention were due in no little measure to the outstanding work of preparation and research carried on by the Governor's Committee on the Constitutional Convention (the Poletti Committee), on which many political scientists and other governmental experts served.

Amendments in 1939. In only ten states were constitutional amendments voted upon in 1939. These were Alabama, California, Georgia, Maine, Michigan, Mississippi, New Jersey, New Mexico, New York, and Ohio. Of the total of 50 amendments considered by these states last year, Georgia's electorate voted on 33. In addition, 11 initiative or referendum measures were on the ballots in California, New Jersey, North Dakota, Ohio, and Rhode Island. Due to the fact that the voters in Georgia approved all 33 of the amendments on which they voted, the total number of acceptances was unusually high. Forty-three out of the 50, or 86 per cent, of the 1939 amendments were adopted. The two amendment proposals attracting the most attention throughout the country were the "ham and eggs," or "$30 every Thursday," amendment in California and the Bigelow pension proposal in Ohio. Both measures were overwhelmingly defeated.

Twenty-six of the 33 Georgia proposals related to the exemption of specific cities and counties from debt limitation. Five others were of local interest, including extension of civil service to county employees and the replacement and remuneration of county officers and judges. Of the two amendments of general interest, one extended the jurisdiction of superior court judges by permitting them to perform judicial functions during vacation while at chambers, when a jury verdict is not required or has been waived. The other provided for the issuance of highway refunding bonds to cover payments due on highway refunding certificates. Approximately 17,000 votes were cast in favor of these various proposals, with some 12,000 opposed.

Five of the remaining ten amendments approved in 1939 were Alabama proposals. Under the terms of one of the amendments, beginning in 1943 the legislature will meet in regular session every two years for not longer than 60 consecutive calendar days. Until the adoption of this amendment, the Alabama legislature met once every four years and was limited to 50 "meeting days." The pay of the legislators also was raised from $4.00 to $10.00 a day. Another interesting section of this amendment provided that "the legislature shall convene on the second Tuesday in January next succeeding their election and shall remain in session for not longer than ten consecutive calendar days." It further provided that no business should be transacted at such a session except the organization of the legislature, the election of officers, the appointment of standing committees, the determination of contested elections, and the inauguration of the governor and other elected state officers. These organization sessions should not be confused with the regular sessions, which are to convene on the first Tuesday in May of 1943 and on the first Tuesday in May of each second year thereafter, until the date of meeting shall be changed by act of the legislature and approved by the governor.

Article I of the Alabama constitution was amended to provide that in all felony cases, except those subject to capital punishment, the legislature may by law dispense with the grand jury and provide for the entering of a plea of guilty by the accused if done within 15 days after the accused has been arrested. This amendment is in the nature of an "information" which makes unnecessary the rendering of true bills through grand juries. Another amendment adopted in Alabama prohibits the investment of trust funds in the stock of any private corporation, providing, however, that "said mentioned trust funds may be invested in corporations or institutions investments in which are guaranteed or insured as to principal by the United States government or its agencies." The amendment also states that such investment shall not exceed the amount insured by any such instrumentality or agency. One of the Alabama amendments "sacked" the board of pardons and gave the governor power

to grant reprieves and commutations to persons under sentence of death. The legislature was then given the power to "provide for and regulate the administration of pardons, paroles, and remission of fines, and may authorize the proper court to suspend sentence and to order probation." The fifth Alabama amendment authorized the legislature, by general or local law, to regulate and permit the use of voting machines at all elections. The vote on all of these measures was in the approximate ratio of two and one-half to one, with from 53,000 to 58,000 voting for and about 20,000 opposed.

Michigan voters approved an amendment providing for the non-partisan election of justices of the supreme court, circuit judges, judges of probate, and circuit court commissioners. The vote was 376,000 for and 241,000 against. A similar proposal was defeated in 1938.

In Mississippi, of the two amendments adopted, one repealed a former provision forbidding bequests to religious corporations or ecclesiastical societies. The second permits such bequests, but limits them to not more than one-third of an estate left by a person who died leaving a spouse or child or descendants of child. Both of these measures passed practically without opposition. Some 58,000 were in favor and approximately 5,000 opposed.

While the country generally was following the vote on the old-age pension proposals in Ohio and California, pari-mutuel horse-racing betting proposals in New York and New Jersey took the headlines in the East. One million and a quarter persons approved the New York amendment, with some 594,000 opposed. The New Jersey amendment, which legalized racing and authorized the pari-mutuel system of betting, was approved by a vote of some 457,000 to 301,000. Proponents of these measures stressed the revenue that would accrue to the state through legalization. It was wildly claimed in New York that the "take" on pari-mutuel would return as much as $10,000,000 a year to the state, but Governor Lehman, in his budget estimates, indicated that $4,000,000 was all that could be expected.

HUBERT R. GALLAGHER.

Council of State Governments.

Organization of the Executive Branch of the National Government of the United States: Changes between October 1, 1939, and April 11, 1940.[1] As in previous lists, mention is here confined generally to units specifically authorized by law or established by the President by executive order or Reorganization Plans under general authority vested in him. Changes in units created by heads of departments or independent establishments are excluded unless of major importance.

[1] Notes in this series appearing previously in the REVIEW are listed on p. 1044 of the issue for December, 1939.

A. Reorganization Plan No. III, under authority of the act of April 3, 1939 (53 *Stat. L.* 561), was transmitted to Congress on April 2, 1940; it will become effective 60 calendar days thereafter; a resolution disapproving the plan was adopted by the House of Representatives, but was rejected by the Senate. The changes made by this plan are as follows:

Administrator of Civil Aëronautics. The designation of the Administrator of the Civil Aëronautics Authority is changed to Administrator of Civil Aëronautics. There are transferred to him from the Civil Aëronautics Authority (1) the functions of aircraft registration and of safety regulation described in Titles V and VI of the Civil Aëronautics Act of 1938 (52 *Stat. L.* 1005), except the functions of prescribing safety standards, rules, and regulations, and of suspending and revoking certificates after hearing; and (2) the duty of requiring persons to give public notice of construction near civil airways affecting safety in air commerce (52 *Stat. L.* 1026). It is stated that the purpose of these transfers is to give the Administrator power in respect to all functions other than those relating to economic regulations, rule-making, and adjudication.

Biological Survey. See Fish and Wildlife Service.

Civil Aëronautics Authority. See Administrator of Civil Aëronautics.

Commissioners of Immigration at Ports and District Commissioners of Immigration. Offices abolished; functions to be administered through such district directors of immigration and naturalization as the Commissioner of Immigration and Naturalization shall designate. The Budget indicates that there are six district commissioners; no port commissioners are listed.

Federal Alcohol Administration. Abolished, and its functions transferred to the Bureau of Internal Revenue. The Federal Alcohol Administration has been nominally a division of the Treasury Department, but it has operated largely as an independent agency. Newspaper reports indicate that the Federal Alcohol Administration may be operated as a subordinate unit of the Bureau of Internal Revenue. The act of June 26, 1936 (49 *Stat. L.* 1964), made the Federal Alcohol Administration an independent establishment, headed by a board of three members. However, the act provided that the section creating the board should not take effect until a majority of the members of the board should qualify and take office. No appointments have been made to these positions.

Federal Surplus Commodities Corporation. See Surplus Marketing Administration.

Fiscal Service of the Treasury Department. New unit created, at the head of which is a Fiscal Assistant Secretary to be appointed by the Secretary of the Treasury in accordance with the civil service laws. The office of an Assistant Secretary of the Treasury, now vacant, is abolished, and all powers of the abolished office are transferred to the Fiscal Assistant Secretary. The major units of the Fiscal Service will be the Office of the

Treasurer of the United States, a Bureau of Accounts, and a Bureau of the Public Debt.

The new Bureau of Accounts will be headed by the Commissioner of Accounts, and will include the present Office of Commissioner of Accounts and Deposits and its existing subordinate units—the Division of Bookkeeping and Warrants, the Division of Deposits, the Division of Disbursements, and the Section of Surety Bonds.

The new Bureau of the Public Debt will be headed by the Commissioner of the Public Debt, and will include (1) the Division of Savings Bonds, which has heretofore been directly subordinate to the Assistant Secretary, and (2) the present Office of the Commissioner of the Public Debt, with its existing subordinate units—the Division of Loans and Currency, the Office of the Register of the Treasury, the Division of Public Debt Accounts and Audit, and the Division of Paper Custody.

The new plan does not substantially change the organization of the Treasury Department. Heretofore all the units mentioned above have reported, either directly or through higher units, to an assistant to the Secretary or directly to the Under-Secretary. The new features are the establishment of the Fiscal Service as a distinct unit and the creation of the new Office of Fiscal Assistant Secretary.

Fish and Wildlife Service. The Bureau of Fisheries and the Bureau of Biological Survey, now in the Department of the Interior, are consolidated into one agency to be known as the Fish and Wildlife Service, under the supervision of a director and not more than two assistant directors to be appointed by the Secretary of the Interior. The offices of Commissioner and Deputy Commissioner of Fisheries and of Chief and Associate Chief of the Biological Survey are abolished.

Fisheries Bureau. See Fish and Wildlife Service.

Marketing and Marketing Agreements Division. See Surplus Marketing Administration.

Recorder of General Land Office. The Office of Recorder is abolished and his duties are transferred to such other employees as the Secretary of the Interior may designate. The office of Recorder of the General Land Office was created by the act of July 2, 1836 (5 *Stat. L.* 111); the appointment has always been by the President. For many years, it has been a minor administrative position.

Surplus Marketing Administration. The Division of Marketing and Marketing Agreements of the Agricultural Adjustment Administration and the Federal Surplus Commodities Corporation are consolidated into one agency, to be known as the Surplus Marketing Administration of the Department of Agriculture. Recently, the two units that have been consolidated have had the same executive head.

Treasury Department. See Fiscal Service of the Treasury Department.

B. Reorganization Plan No. IV was transmitted to Congress on April 11, 1940. It will become effective 60 calendar days thereafter; a resolution disapproving the plan was adopted by the House of Representatives, but was rejected by the Senate.

In the message transmitting the plan, the President recommended the reënactment of the Reorganization Act, which expires on January 20, 1941. He recommended also that all agencies be made subject to reorganization. The present act provides for the exemption of the following agencies: Civil Service Commission, Coast Guard, Engineer Corps of the Army, Mississippi River Commission, Federal Communications Commission, Federal Power Commission, Federal Trade Commission, General Accounting Office, Interstate Commerce Commission, National Labor Relations Board, Securities and Exchange Commission, Board of Tax Appeals, Employees' Compensation Commission, Maritime Commission, Tariff Commission, Veterans' Administration, National MediationBoard, National Railroad Adjustment Board, Railroad Retirement Board, Federal Deposit Insurance Corporation, and Board of Governors of the Federal Reserve System.

The President also commented on the fact that the Reorganization Act prohibits the abolition of functions, and thus "precludes the making of large reductions in expenditure through reorganization plans."

The changes made by Reorganization Plan No. IV are as follows:

Civil Aëronautics Authority. The Civil Aëronautics Authority, now an independent establishment, is transferred to the Department of Commerce and its name changed to Civil Aëronautics Board. The Air Safety Board is abolished and its functions transferred to the Civil Aëronautics Board. The functions of the Administrator of Civil Aëronautics are to be administered under the direction and supervision of the Secretary of Commerce. The Civil Aëronautics Board shall exercise its functions of rule-making, adjudication, and investigation independently of the Secretary of Commerce, but its routine functions shall be administered under the direction of the Secretary of Commerce and "through such facilities as he shall designate or establish."

The Air Commerce Act of 1926 (44 *Stat. L.* 568) created the Aëronautics Branch in the Department of Commerce. On July 1, 1934, the Secretary of Commerce changed the name to Bureau of Air Commerce, which was succeeded by the Civil Aëronautics Authority, an independent establishment created by the act of June 23, 1938 (52 *Stat. L.* 973).

Columbia Institution for the Deaf. The functions of the Department of the Interior pertaining to this institution are transferred to the Federal Security Agency. This institution, which is in the District of Columbia, is not a government agency, but receives small federal appropriations.

Compromises under Federal Alcohol Administration Act. The compro-

mise of penalties authorized by section 7 of the act of August 29, 1935 (49 *Stat. L.* 985), is transferred from the Attorney-General to the Secretary of the Treasury.

Disbursement Functions of United States Marshals and Officers of the Post Office Department. By Executive Order 6166 of June 10, 1933, these functions were transferred to the Treasury Department. The operation of that order, as regards these agencies, has been suspended by subsequent executive orders and the transfer never became effective. The effect of the present reorganization is to cancel Executive Order 6166 in so far as it relates to these agencies, and substantially to maintain the *status quo.*

Dominican Customs Receivership. Transferred to the Department of State from Division of Territories and Island Possessions of the Department of the Interior.

Food and Drug Administration. Transferred from Department of Agriculture to Federal Security Agency with the exception of functions relating to the administration of the Insecticide Act of 1910 (36 *Stat. L.* 331) and the Naval Stores Act (42 *Stat. L.* 1435). The designation of the head of the Food and Drug Administration is changed to Commissioner of Food and Drugs. No agency is designated for the administration of the Insecticide Act and the Naval Stores Act. As the powers under these acts are conferred on the Secretary of Agriculture, he might presumably designate the administrative agency. On the other hand, the appropriation for the enforcement of these acts is made to the Food and Drug Administration; under the Reorganization Act the President could transfer the funds to another agency, but it is doubtful whether the Secretary of Agriculture has this power.

Freedmen's Hospital. Transferred from Department of the Interior to Federal Security Agency. This is a general hospital in the District of Columbia for Negroes.

Howard University. The functions of the Department of the Interior pertaining to Howard University are transferred to the Federal Security Agency. This is an institution in the District of Columbia for Negroes. It is not a government agency, but has received federal appropriations in considerable amounts.

Interbuilding Messenger Functions. Interbuilding messenger service and transportation of mail to and from the city post office are transferred from the several agencies (save those excepted by the Reorganization Act of 1939) to the Post Office Department. This is in effect the creation of a new agency, as these services have not been separately organized by any agency. As a rule, interbuilding messenger service has been performed by any available messenger, who spent most of his time in intramural work. Transportation of mail to and from the post office has been done at specified hours by the trucks which belong to the several agencies, and which at other times are engaged in miscellaneous hauling.

St. Elizabeth's Hospital. Transferred from the Department of the Interior to the Federal Security Agency. This is a hospital in the District of Columbia for the insane of the military and naval services, of federal prisons, and of the District of Columbia.

Soil Conservation Service. The functions pertaining to soil- and moisture-conservation operations conducted on any lands "under the jurisdiction" of the Department of the Interior are transferred to that Department, to be administered through such agencies as the Secretary of the Interior shall designate. The balance of the Soil Conservation Service will remain in the Department of Agriculture.

State Nautical Schools. The functions of the Secretary of the Navy with regard to furnishing vessels for state marine or nautical schools and administering funds for the support of such schools are transferred to the Maritime Commission, which is also given jurisdiction over vessels and equipment of the Navy now loaned to such schools.

Wage Protection for Laborers on Public Works. The act of June 13, 1934, (48 *Stat. L.* 948), makes it unlawful to induce through intimidation any person employed on public works to give up any part of his compensation, and authorizes the Secretary of the Interior and the Secretary of the Treasury jointly to make reasonable regulations governing contractors. These powers are transferred to the Secretary of Labor.

Weather Bureau. Transferred from the Department of Agriculture to the Department of Commerce, with the proviso that the Department of Agriculture may conduct research concerning (a) relationships between weather and crops, (b) long range weather forecasting, and (c) relationships between weather and soil erosion.

C. Other changes in organization have been as follows:

Administrative Council, Department of Agriculture. Established by Memorandum 852 of the Secretary of Agriculture of February 12, 1940, to study departmental reports on activities and expenditures and to suggest administrative improvements and economies in operation. The Council consists of the Assistant to the Secretary, the Director of Finance, the Director of Personnel, the Land Use Coördinator, the Director of Research, the Director of Extension Work, the Director of Information, the Director of Marketing, and the Solicitor.

Committee to Arrange Observance of the Sesquicentennial of the First United States Patent Law. Authorized by Public Resolution 58, 76th Congress, approved March 15, 1940. Commission to consist of the chairman of the Senate Committee on Patents, the chairman of the House Committee on Patents, the Secretary of Commerce, the Commissioner of Patents, and five other members selected by them.

Farm Credit Administration. In the December issue of the REVIEW (p. 1047), it was stated that the Secretary of Agriculture had announced that the Farm Credit Administration "will not become an integral part

of the Department of Agriculture" and "will be an autonomous agency as heretofore." The legal status of the Farm Credit Administration has not changed, but Memorandum 846 of the Secretary of Agriculture of January 6, 1940, and subsequent actions indicate that the policies of the Farm Credit Administration are being made to conform to those of the Department, and that practically the Farm Credit Administration has the status of a bureau of the Department. This change in policy was followed by the resignation of the Governor, one Deputy Governor, the General Counsel, and the Land Bank Commissioner of the Farm Credit Administration. Each was succeeded by a person previously connected with the Department of Agriculture. Hearings have been held on several bills to restore the Farm Credit Administration to its former status as an independent agency, and the proposal has been given strong support by representatives of organized agriculture.

Fertilizer Research Division of the Bureau of Agricultural Chemistry and Engineering. By Memorandum 843 of the Secretary of Agriculture of December 1, 1939, the Chief of the Bureau of Plant Industry, as personal representative of the Secretary of Agriculture, was designated to supervise all activities of the Fertilizer Research Division of the Bureau of Agricultural Chemistry and Engineering.

National Defense Power Committee. Abolished October 13, 1939, and its work transferred to the National Power Policy Committee. The National Defense Power Committee was created September 3, 1938, and the National Power Policy Committee was established July 9, 1934. All the actions mentioned in this paragraph were taken by letter of the President, and are not evidenced by executive orders or other published papers.

L. F. SCHMECKEBIER.

Brookings Institution.

The Vocational Senate in Ireland.[1] Out of an Irish dilemma has come one of the most striking legislative experiments in modern government. After a short life from 1922 to 1936, the first Irish upper house proved so inept as to be abolished. Then came an interval of unicameralism, and now under the constitution of 1937 another senate has been brought into existence, differing radically from the old. In the early days of her independence, Ireland was confronted with the problem of precisely how to constitute an upper house, how to differentiate it from the lower house, and whom to represent in it. Now, after a vicissitudinous history, she has embarked upon a course of advanced ideas in parliamentary practice—upon a plan which attempts to secure vocational representation.

Why has it been difficult to fit a second chamber into the structure of the Irish state? In feudal society, class cleavage produced assemblies of more than one house. Since democratization of the social order, this basis of separation has lost significance, but the tradition persists in the bicameralism of such countries as England. An hereditary nobility has not survived within the Irish state, and *Bunreacht na hEireann* specifically precludes its regeneration: "Titles of nobility shall not be conferred by the State."[2] There are no social vestiges of the Gaelic past capable of preservation in an upper chamber. In federal governments like the United States and Australia, the component units of the federation find representation by means of an upper house, but within the framework of the Irish government there are no subordinate commonwealths to exact such geographical recognition. Those countries which have employed the senate as an integer in the federal system hold no book for Ireland.

The chief function of bicameralism in modern constitutions is to afford a check upon precipitate action in the legislature. This purpose it was which underlay creation of the first Irish senate, and this reason it was to which de Valera bowed in erecting the second and present body. Although the conception of an upper house as a revising and delaying device accords with Montesquieu's notion of checks and balances, does it conform to the scheme of parliamentary government? If the government of the day must be responsible to the lower house and to the people, as it must in Ireland, how far can its action admit of surveillance by an upper house not directly responsible? The English parliamentary tradition dominates the structural provisions of *Bunreacht na hEireann*. In addition to the absence of any self-evident basis of membership, the drafters of the new

[1] Acknowledgment is made to the board of governors of the Horace H. Rackham School of Graduate Studies of the University of Michigan for a grant which made this and other studies in Ireland possible.

[2] *Bunreacht na hEireann* (Constitution of Ireland), Art. 40, sec. 2, par. 1.

Irish constitution faced the difficulty of articulating two legislative houses into responsible government.

That, in brief, has been the Irish legislative dilemma. When Saorstát Eireann came into being, the actual factors behind the creation of the first upper house were diverse. In 1921, the chairman of the peace delegation to England, Arthur Griffith, promised the Unionists that there would be an upper house in the governmental structure of the Saorstát. In a letter written to Lloyd George, he said: "Sir, I write to inform you that at a meeting I had with representatives of Southern Unionists I agreed that a scheme should be devised to give them their full share of representation in the first chamber of the Irish parliament, and that, as to the upper chamber, we will consult them as to its constitution, and undertake that their interests will be duly represented."[3] Unionist sentiment in southern Ireland had a double objective in supporting bicameralism, regarding it as a guarantee against too much democracy on the one hand and too much nationalism on the other. A suggestion was put forward by the leader of the Labor party to the effect that the senate could be an instrumentality for the representation of functional groups, and an article not at the time acted upon was inserted in the 1922 constitution permitting the Oireachtas, or parliament, to set up vocational councils and to determine the duties of such bodies and their relation to the government.[4]

The senate as first established was composed of 60 members, of whom 30 were temporarily elected by the Dáil and 30 were temporarily named by the president of the executive council. The trend toward vocational representation was indicated by a resolution of the Dáil holding it expedient that the latter should, before making his appointments, consult certain representative bodies.[5] That Cosgrave did so was one reason why this first body commanded respect. The same trend was reflected in the constitutional specifications for senators, though the obtaining of a conservative personnel was the heart of the matter: "Seanad Eireann shall be composed of citizens who shall be proposed on the grounds that they have done honour to the Nation by useful public service or that, because of special qualifications or attainments, they represent important aspects of the Nation's life."[6] As a permanent system, the 1922 constitution provided for the nomination of senatorial candidates by the Oireachtas and

[3] Dorothy Macardle, *The Irish Republic* (1937), pp. 614–615.

[4] *Constitution of the Irish Free State* (1922), Art. 45.

[5] The Chamber of Commerce, the Royal College of Physicians, the Royal College of Surgeons, the Benchers of the Honourable Society of King's Inn, Dublin, the Incorporated Law Society of Ireland, and the county borough councils. See resolution of Dáil Eireann, Oct. 25, 1922, in Nicholas Mansergh, *Government of the Irish Free State* (1934), p. 76.

[6] *Constitution of the Irish Free State* (1922), Art. 30.

for their election by popular vote under the system of proportional representation.

The so-called permanent plan was put into operation only in 1925, when circumstances offered peculiar difficulty. With 76 candidates on the senatorial ballot, the electorate faced a plethora of choices. When the executive council did not take an influential lead in the election, the voters were left without a guiding hand. The second largest party in the country, Fianna Fáil, did not participate, and the general level of electoral participation was low. Candidates representing small blocs of voters were victorious, and the results were an invitation to further change.

In 1928, a group of constitutional amendments introduced indirect election for the senate. The Dáil and the Seanad each nominated one-half the candidates, who altogether equaled twice the number of vacancies to be filled. Then the two houses, by joint ballot and proportional representation, elected the senators—a plan fallow for the seeds of political partisanship. The year before this took place, members of the Fianna Fáil party had decided to take seats in the Dáil and so become the legal opposition to the Cosgrave Government. With Cosgrave and de Valera arrayed against one another in the Dáil, their struggle for control of the Seanad was inevitable. Party executives showed their hands by making only such number of nominations as would conform to their respective voting strength, thereby aiming at the maximum electoral result. Party divisions in the upper chamber hardened after the election of 1931.

In 1932, de Valera replaced Cosgrave as president of the executive council, and two years later he introduced legislation to abolish the upper house. Party animus fed by remembrance of imprisonment and assassination still ran high. Since the Cosgravites were entrenched in the Seanad with a majority, they fought to impede de Valera's legislative program. De Valera's action was precipitated by what his party viewed as the recalcitrance of the Seanad, and by what Cosgrave's adherents regarded as the salutary restraint of an upper house.

An examination of the senatorial debates at this stage reveals the abrupt difference of opinion with the Dáil on such a major issue as the bill to remove from the constitution the oath of allegiance to the king. Partly because of partisanship, and partly because of haste and inexperience in the Fianna Fáil Government, the upper house during 1932 and 1933 was very active in the amendment of legislation. In the nine years of the Cosgrave administration, 216 non-money bills were passed by the Seanad without amendment, and 122 bills were passed with a total of 1,150 amendments, to which amendments the Dáil agreed in every instance but 30. On the other hand, during only two years and three months of the de Valera administration, the Seanad passed 63 non-money bills

without amendment, and made 465 amendments to 42 bills, to which the Dáil agreed in every instance but 31. That the Seanad was more active in combing Government non-money bills in the early years of de Valera's rule than under the preceding Government is the inescapable conclusion.[7] Furthermore, there was more activity in the rejection of bills. During Cosgrave's administration, one bill was held up and another rejected. In the early years of de Valera's régime, four bills were rejected. Two of these, the Constitution (Removal of Oath) Bill and the Wearing of Uniforms (Restriction) Bill, were of unusual significance.

The specific occurrence which fired de Valera's determination to dispense with the upper house was as follows. To deal with the rise of General O'Duffy and the Blue Shirt movement, the Government had carried through the Dáil a bill designed to restrict the wearing or carrying of uniforms, badges, banners, and other such articles, and the use of military titles. This Uniform Bill was rejected by the Seanad on March 21, 1934.[8] On the previous day, the upper house had amended the annual Defence Forces Bill to limit its operation to three months as a protest against the Government's policies in managing the new volunteer force. De Valera countered by initiating in the Dáil a bill to abolish the Seanad, stating that it was, as then constituted, an absolute menace to the country.

On May 30, 1934, this measure had advanced to its second stage in the body chiefly concerned with its provisions. For three days the Seanad debated with acrimony the general principles of bicameralism, de Valera speaking on the first and third days. Fianna Fáil and Fine Gael senators exchanged charges and counter-charges. The Government campaign against the upper house was called the entering wedge to dictatorship. In reply, de Valera admitted a desire for some type of second chamber (albeit not the existing one) for purposes of revision, but held that neither history, reason, nor practical experience proved the case for bicameralism. At the conclusion of this battle of words and wits, the Seanad naturally refused to advance the bill. Eighteen months later, the Dáil again sent it to the upper house. Finally, in May, 1936, the two-year campaign for the abolition of the Seanad was successfully concluded by action of the Dáil alone.

An interlude of unicameralism lasting from 1936 to 1938 ensued. The state of affairs after some months was summarized by a conservative organ: "The fact that there was only one house in the Legislature during the second half of the year (1936) did not make any apparent difference, except that bills went through their course more rapidly, not having to undergo the scrutiny of a second chamber. The Dáil was free from any check on its authority, and so far none of the terrible things which had

[7] These figures are from Seanad Eireann, *Parliamentary Debates*, 30th May, 1934, pp. 1241–1242. [8] *Ibid.*, 21st March, 1934, p. 874.

been anticipated from an autocratic, unicameral government has occurred."[9] Beyond question, the senatorial interregnum from 1936 to 1938 was vastly different from the excursions and alarms raised by the move toward abolition of bicameralism. The absence of any checking or delaying factor permitted de Valera, however, to act with celerity at the time of Edward VIII's abdication. The Government pushed through the Dáil under clôture and in two days' time not only the fundamental amendment removing the king from the constitution and (for all practical purposes) abolishing the governor-general, but also the equally fundamental External Relations Bill defining the relations of the Free State to the English crown. These moves were in effect, if not in fact, ratified by a majority of the voters in 1937 when the new constitution was submitted to the electorate, so that it cannot be said that these measures, hastily enacted as they were, enforced the will of the Government as against that of the people.

Shortly after the old senate went out of existence, de Valera summoned a commission to consider the question of a successor to it, to which commission Cosgrave refused to nominate any members of his party. In the Ard Fheis of the Fianna Fáil party in the fall of 1936, de Valera announced his intention to restore bicameralism in the new constitution, and indicated that the plans were influenced by a minority report of the commission recommending selection of some of the members on a functional basis.[10] No one pretended that the new senate as actually outlined in the draft constitution submitted to the Dáil on May 1, 1937, was ideal. De Valera was merely acceding to the wishes of the conservatives: "My attitude is that, even though some of us be largely indifferent to the question of whether or not there is a Seanad, if a large section of the people of the country think that there is something important in having a Seanad, then, even if we ourselves are indifferent to it, we should give way to the people who are anxious for it."[11]

The provisions of the constitution of 1937 as finally adopted left the details of the new body to statutory elaboration: the new upper chamber was to have 60 members, 11 to be named by An Taoiseach (the prime minister), three to be elected by the National University, and three by the University of Dublin.[12] The remaining 43 were to be elected in a manner to be provided by law from panels of candidates representing certain group interests. The nature of the electorate which was to be used

[9] *Irish Review and Annual, 1936* (Supplement to *The Irish Times.*), Jan. 1, 1937.

[10] Saorstát Eireann, *Report of the Second House of the Oireachtas Commission* (1936), pp. 26–34.

[11] Dáil Eireann, *Parliamentary Debates*, 11th May, 1937, p. 56.

[12] The representation originally accorded to the universities in the Dáil was omitted by the new constitution.

in selecting the senators was not determined by the final form of the constitution, but it was required that proportional representation and the secret postal ballot be used. Further constitutional specifications related to the vocational panels from which representation must come: (1) National Language, Literature, Art, and Education;[13] (2) Agriculture and allied interests, and Fisheries; (3) Labor, whether organized or unorganized; (4) Industry and Commerce, including banking, finance, accounting, engineering, and architecture; (5) Public Administration and Social Services, including voluntary social activities. Finally, the constitution left the way open for creation by law in the future of a more direct type of functional representation.[14] Such legislation might authorize the election of a number of senators directly by functional councils.

After popular adoption of the *Bunreacht* in June, 1937, the requisite legislation[15] provided that the selection of the 43 senators should be made by an electoral college composed of members of the Dáil and of other electors chosen by the county councils and the county-borough councils.[16] These local government electors, to the number of 217, plus the 138 members of the Dáil are then to make up the composite electoral college of 355 members. This arrangement settled the nature of the body which should make the final selections from the panel of nominees. The legislative details governing the nominations to the five vocational panels are intricate. Members of the Dáil are allowed to nominate individuals to the vocational panels. Registered nominating bodies representing vocational groups are likewise allowed to make such nominations. The electoral college selects 21 members from the candidates nominated by registered nominating bodies and 22 members from candidates nominated by Dáil deputies.[17] Through this plan of selection, the electoral college is restricted

[13] This panel includes law and medicine (surgery, dentistry, veterinary medicine, and pharmaceutical chemistry), according to the Seanad Electoral (Panel Members) Act, 1937.

[14] *Bunreacht na hEireann*, 1937, Art. 19.

[15] Seanad Electoral (Panel Members) Act; No. 43 of 1937.

[16] Each of these 31 councils was authorized to select seven electors by proportional representation, making a total of 217 such electors.

[17] Seanad Electoral (Panel Members) Act, 1937.

Name of Panel	*Number of Candidates to be Selected from Nominees of Nominating Bodies by Electoral College*	*Number of Candidates to be Selected from Nominees of Deputies by Electoral College*
Cultural and Educational	4	1
Agricultural	5	6
Labor	5	6
Industrial and Commercial	4	5
Administrative	3	4
Total	21	22

not only as to the number to be taken from each panel, but also as to the number to be taken from the divergent sets of nominees on each panel.

The Seanad Electoral Act provides for additional machinery. The Seanad returning officer, an official imbued with discretionary power, is appointed by the minister for local government and public health.[18] It is the returning officer who conducts senatorial elections and annually revises the register of nominating bodies. The appeal committee, which passes final judgment on the decisions of this officer as to whether a body may nominate, is composed of 15 deputies elected by the Dáil. Further, for the Administrative panel there are two *ex officio* nominating bodies which may have political influence: the General Council of the County Councils and the Association of Municipal Authorities. For this same panel, An Taoiseach, any former Taoiseach, or any former president of the executive council, may each nominate two candidates. If there is any insufficiency in the number of nominations from nominating bodies, An Taoiseach completes the quota for the respective sub-panel. The electoral college, in the final instance, acts as a sieve through which all candidates must pass. Since as finally fixed the college is chosen by political assemblies (national and local), a political cast is indicated in the complexion of the college itself. De Valera's opponents saw connection between the utilization in the electoral college of the county council delegates and the fact that they have been preponderantly Fianna Fáil members. Dáil deputies not only nominate to the sub-panels but also vote in the electoral college, which gives them the opportunity to carry out the pattern of vocational representation both in the nominations and in the elections. In actual practice, Seanad contests follow Dáil elections, which permits the defeated candidates for the lower house to run for the upper. This not only could happen but did, and other considerations than vocationalism came to the surface. That is to say, a seat in the upper house became a consolation prize for a worthy but rejected deputy.

That Ireland does not yet have systematic organization of its vocational groups became clear from the miscellaneous associations which sought the affirmative action of the Seanad returning officer in listing them as nominating bodies. By exclusions and definitions, the Seanad Electoral Act sought to guide the discretion of the officer, but could not resolve in advance all disputes and jealousies. Groups organized for profit and groups composed of employees of the government cannot be registered. The representation of agriculture and labor through specific units presented special complications. In the latter field, the most significant conflict occurred. The recognition of the Cottage Tenants' and Rural

[18] Mr. Wilfrid Brown, of the Department of Local Government and Public Health, has served in this capacity.

Workers' Association as a nominating body was protested unsuccessfully by the Irish Trade Union Congress, and eventually caused the abstention of the Labor party from the first Seanad election. As a result, the members then elected to the Labor sub-panel were more representative of the rural workers than of the trade-union affiliates. The Labor party charged that "the effect of admitting the body in question to the panel of nominating bodies was to deprive the trade union movement of its rightful standing as the representative of Labor in the economic sense, and to enable certain individuals, politically associated with the Government party, to secure, at the expense of the workers, representation in the Seanad to which they have no claim."[19] The number and diversity of the appeals indicated the lack of established organization among the vocations when this new responsibility was suddenly put in their laps. In the first compilation, other instances of groups appealing from the decision of the returning officer were: the Dublin Cowkeepers' and Dairymen's Association, the General Nursing Council, and the National Union of Journalists. In no instance, however, did the committee reverse the officer's decision.

This state of affairs was not unanticipated by de Valera: " . . . the recommendation [of the Seanad Commission] was that we should get a Second Chamber that, at least, would be of a character in which there would be represented men who would have special knowledge and experience of certain activities in our national life, and that, though we are not organized in a way that would make such a Seanad immediately practicable, nevertheless there was a germ of a suggestion which we tried to work up and make practicable."[20]

The electoral college cast its ballots for the first time in March, 1938. For this election, members of the Dáil nominated 39 candidates. Although the Dáil's sub-panel nominations were made on political lines, consideration was given, as the constitution requires, to the fitness of the nominees' occupations. However, calibre was more the criterion than specific vocationalism in the choice of such successful candidates as General Richard Mulcahy, ex-minister; Miss Margaret Pearse, sister of the 1916 leader; and the McGillycuddy of the Reeks. To the other group of sub-panels, some 45 registered nominating bodies made nominations. Altogether, there was a total of 132 candidates on the 10 sub-panels from which the electoral college of 354 members (one less than the potential 355 by reason of a vacancy) selected 43 members of the new Seanad.[21]

Those vocational associations which succeeded in placing their candidates among the elected senators were:

[19] *The Irish Press*, Feb. 25, 1938.
[20] Dáil Eireann, *Parliamentary Debates*, 11th May, 1937, p. 56.
[21] *Iris Oifigiúil*, March 15, 1938, pp. 401–402.

Name of Panel	*Name of Nominating Body*
Cultural and Educational	Veterinary Council of Ireland
	Irish Technical Educational Association
	General Council of the Bar of Ireland
Agricultural	Irish Agricultural Organization Society
	Munster Agricultural Society
	Beet Growers' Association
Labor	Cottage Tenants' and Rural Workers' Association
Industrial and Commercial	Federation of Industries
	Women's Industrial Development Association
	Irish Tourist Association
	Licensed Grocers' and Vintners' Protection Association
Administrative	County Councils' General Council
	Mount Street Club

On the Cultural and Educational panel, two senators were practising veterinary surgeons, one a barrister-at-law, and one the principal of an Irish college. Although nominated, no teachers, professors, physicians, journalists, or librarians were elected. On the Agricultural panel, the five elected were all farmers, whereas bloodstock breeders, cattle dealers, creamery managers, and fish merchants ran unsuccessfully. On the Labor panel, though it was not of much significance because of the boycott, the senators nominated by the only vocational unit participating were an agricultural worker and a member of the Dublin county council. On the Industrial and Commercial panel, those elected were a company director, stockbroker, nurses' matron, and merchant, while those defeated included merchants, manufacturers, and managers. On the Administrative panel, the vocations of the nominees seemed to have little cohesion—an accountant, a farmer, and a draughtsman being chosen.[22]

The conservative *Irish Times* reported after this election: "The vocational idea was swamped by the political. Many candidates, qualified in their respective spheres, received not a single vote, while others with undoubted political records were among those elected."[23] The larger the proportion of candidates nominated to a panel in relation to the number of allotted seats, the greater would seem the vocational organization within that field. Whereas Labor, Administration, and Agriculture were low in the number of candidates put up, the Cultural and Educational group

[22] See *The Irish Press*, March 30, 1938.

[23] *Irish Review and Annual, 1938* (supplement to *The Irish Times*), Jan. 1, 1939.

and the Industrial and Commercial body returned a large slate of nominees.

The six senators elected from the two universities were leading members of the graduate bodies and faculties, and included one of the three women altogether elected to the new senate. The 11 senators chosen by An Taoiseach included men of outstanding public service from various parties, like Frank MacDermot, former Independent deputy whose minority report for the Senate commission had been influential; Colonel Maurice Moore, of Irish Volunteers fame; and Dr. Robert Farnan, gynecologist and director of *The Irish Press*. Of all 60 new senators, almost one-third were former members of Dáil Eireann or ex-senators, a fact which attests the political complexion of the new chamber.

Although some sessions of the Seanad had been held, little of importance had been transacted by June, 1938, when a general election was called necessitating another senatorial balloting. Although the same chairman, Seán MacGioBúin, was chosen when the body reassembled in September, 1938, one-third of the house's personnel had changed. Since the 11 senators named by An Taoiseach and the six from the universities were returned unchanged, the turnover came entirely among those chosen by the electoral college from the vocational panels, and affected nominees proposed by the Dáil and by the associations alike.[24] The Labor party did not boycott this election, and the Trade Union Congress nominated certain candidates who were elected, the Labor panel being thereby strengthened. Some senators of both the Fine Gael and Fianna Fáil persuasions were missing; but in only one instance did a senator relinquish his seat in the upper house by running successfully for election to the lower, and this was the old Fine Gael front-bencher, General Mulcahy. Political nominees were again successful. If the object of the vocational method had been to obviate party alignment, it was not realized. The functional principle has been so attenuated by other factors that it cannot be held responsible for the political nature of the new upper house. It was at first proposed that the senators should sit in the chamber according to vocational groupings, or that they should meet in panel committees to discuss relevant bills. When this was not carried out, the chamber arranged itself more or less by party affiliations like the Dáil. The majority obtained by the Government at the second election was substantial.

The active partisanship of the new house does not derive entirely from the nominating process or from the operation of the vocational bodies, since a large slate of representative nominees has been presented at each of the two senatorial elections so far held. The onus falls more directly upon the electoral college, which has both times selected partisan politicians without giving a single first preference vote to many of the nomi-

[24] In this election, there were 353 members of the electoral college and 129 candidates on the panels. *Iris Oifigiúil*, July 29, 1938, pp. 999–1006.

nees whose reputation for public service and special vocational experience is high. Under the complicated system of proportional representation employed, eight votes sufficed to elect from most panels; and since the fortunate candidate receives £360 a year for possibly five years, the system puts great pressure on the electors.

When the lack of true vocationalism became apparent after the first senatorial election, the members of the new house themselves took cognizance of the situation. In February, 1938, the government appointed a Commission on Vocational Organization, in accord with a senate resolution, and instructed the group to examine and report on: "(a) the practicability of developing functional or vocational organization in the circumstances of this country; (b) the means best calculated to promote such developments; (c) the rights and powers which should be conferred, and the duties which should be imposed, on functional or vocational bodies, and, generally, the relations of such bodies to the Oireachtas and to the Government; and (d) the legislative and administrative measures that would be required." Since the work of this commission is still in its early stages, and since the normal term of the present senate runs until 1943, no recommendations or changes may be proposed for the immediate future. In the light of the commission's terms of reference, it is likely to be concerned more with the study of such vertical vocational organization as would ameliorate the clash between classes than with specific proposals for another upper house. The commissioners were empowered to inquire into the social structure underlying functional development without confining themselves to political adaptation of vocationalism.[25]

The 1937 constitution contains a provision parallel to one in the 1922 constitution—a provision derived from the Weimar constitution: "The Oireachtas may provide for the establishment or recognition of functional or vocational councils representing branches of the social and economic life of the people."[26] Whether it will in future be possible to permit direct election of senators by such functional associations in accordance with law, it is too early to judge. Such a law might eliminate the electoral college as it now exists and render the functional idea more distinct, but it is held that any vocational units should be implicit in the economic life of the nation. Toward such a turn of events, de Valera has from the first looked, as was evident in what he said regarding the electoral college during the constitutional debates: " . . . if there were to be here any development of functional organization or vocational organization, it would obviously provide a better method for the selection of the Seanad than the methods that are herein proposed."[27] Dissatisfaction at present is overt. At the Ard Fheis of Fianna Fáil in November, 1938, a resolution

[25] Commission on Vocational Organization, *Terms of Reference.*

[26] *Bunreacht na hEireann*, 1937, Art. 15, sec. 3, par. 1 and 2.

[27] Dáil Eireann, *Parliamentary Debates*, 11th May, 1937, p. 58.

was put down that "the present system of election to the Senate be abolished. . . ."[28]

If the five functional "interests" named in the constitution are to be represented accurately, some working organization must be relied upon within each group to propose only "the names of persons having knowledge and practical experience of the [specified] . . . interests and services. . . ."[29] Guilds both of the merchant and craft type flourished in Ireland, some having been chartered in the twelfth century. Although certain guilds were found in existence in Dublin a hundred years ago by the commissioners then investigating Irish municipal corporations, the guilds' exclusion of Roman Catholics, and their neglect of industrial for political interests, soon brought about their decline.[30] In Ireland, guild organization outlasted its existence in Europe. The industrial revolution, which brought new economic alignments, did not take place across the Irish Sea as early as elsewhere. Even today, Ireland does not manifest the complex social pattern of her neighbors. Although organized vocational fields were not at hand when the new senatorial plans went into effect, the artificial establishment of suitable units offered no solution; for it is believed that they must be genuine and traditional, not merely creatures of the state. The value of economic bodies to the state is their non-political origin. Evocation by fiat of vocational units would conflict with the concept of statehood in Ireland whereby the government acts only so far as "the common good" requires, and religiously avoids encroachment upon prior units of society such as the family.

The new legislative organ's powers are much like, if slightly less than, those of the preceding Irish upper house. The intention was to create a revising and delaying mechanism with no veto power. The Seanad may initiate ordinary bills, but not money bills. An ordinary bill initiated in and passed by the lower house goes to the upper, where there are three possible courses of action: (1) the Seanad may pass the bill, in which case it goes to the president for his signature; (2) the Seanad may amend the bill, in which case it is returned to the Dáil, where the amendments are rejected or accepted before it goes to the president for his signature; (3) the Seanad may delay the bill for ninety days by rejecting it or failing to take any action, after which interval the Dáil may resolve that the bill become law. Money bills may merely have recommendations made to them by the Seanad during a period of twenty-one days. At the end of the stated time, if a money bill has not been returned to the Dáil or if it has been returned with recommendations which the Dáil does not accept, the bill is deemed to have been passed. The referendum has been restored to the constitution, but it requires action of a majority of the senators,

[28] *The Weekly Irish Times*, Nov. 12, 1938.
[29] *Bunreacht na hEireann*, 1937, Art. 18, sec. 7, par. 1.
[30] See J. J. Webb, *The Guilds of Dublin* (1929), pp. 56–57.

plus one-third of the deputies, to petition the president to refuse to sign a bill. He it is, in consultation with the council of state, who decides whether a bill contains "a proposal of such national importance that the will of the people thereon ought to be ascertained. . . ."[31] This does not apply to constitutional amendments, which have to be referred anyway after 1941. In addition to reduction in the number of days for which a bill can be delayed, a further limitation is imposed upon the new body as compared with the original senate. If An Taoiseach certifies a bill (this does not apply to constitutional amendments) to be "urgent and immediately necessary for the preservation of the public peace and security, or by reason of the existence of a public emergency whether domestic or international"; if the Dáil so resolves; and if the president, after consultation with the council of state, concurs, the time for consideration of this bill by Seanad Eireann may be abridged. The law resulting from passage of such a bill, however, expires in ninety days unless both houses vote to extend it.[32]

During debate in the Dáil on the senatorial provisions of the new constitution, de Valera said: " . . . you will notice that they are very limited powers. Of course, they have to be limited unless you are to face a clash between the two houses, which would be most unfortunate."[33] The new senate is weaker in the matter of its powers than was the old senate as originally set up. The period during which it can delay ordinary legislation is shorter; time for consideration of bills certified to be "urgent" can be abridged; and although the referendum is restored, the Seanad can act not alone in requesting it as previously, but only with concurrence of one-third of the deputies. Both the majority and minority reports of the Senate commission had recommended that the senate's power to call for a referendum be in some ways extended.

An Taoiseach and his ministers address the upper house on bills within their respective spheres of interest, although not more than two of the cabinet may be members of the senate. It is expressly stated that An Taoiseach, An Tanaiste, the minister of finance, and all but two of the rest must be members of the Dáil, with the reservation that "every member of the Government shall have the right to attend and be heard in each house. . . ."[34]

At the opening of a session, Seanad Eireann first elects a chairman (Cathaoirleach) and a deputy chairman (Leas-Cathaoirleach), for which offices no member of the Government and no parliamentary secretary is eligible. Each sitting begins with prayer, and proceedings may be conducted in Irish or in English. Except for perfunctory regulations from the chair, the latter language is more customary. Twelve senators constitute

[31] *Bunreacht na hEireann*, 1937, Art. 27, sec. 1. [32] *Ibid.*, Art. 24, sec. 3.
[33] Dáil Eireann, *Parliamentary Debates*, 11th May, 1937, p. 60.
[34] *Bunreacht na hEireann*, 1937, Art. 28, sec. 8.

a quorum. A sitting may be suspended upon motion. The Cathaoirleach prepares an order paper which governs each sitting, and he is "sole judge of order in the Seanad."[35] By vote of the Seanad, a member may be suspended for one week; on the second occasion, for two weeks; on the third or any subsequent occasion, for three. The general limitation on debate restricts each senator to one speech on each motion or amendment except to close debate on an original motion or amendment of which he was the proposer. When the question under debate is put to the house, the Cathaoirleach first takes a verbal vote, those in the affirmative answering by "Tá" and those in the negative by "Níl." Although rarely necessary in so small an assembly, senators may and do claim divisions to prove relative strength, whereupon the division bell is rung, the doors locked, and tellers named for each side.

Bills are treated by means of five stages, the first constituting introduction of the measure. Since the senate has in practice acted as a reviewing body for Dáil legislation rather than as an initiating body, this stage is unimportant, bills passed by the Dáil being deemed to have already passed the first stage in the senate. The second stage is devoted to debate on the principle of a bill. The Cathaoirleach calls on the minister, parliamentary secretary, or senator in charge of the bill to open the debate. In the case of Government bills (and these constitute the great bulk), the debate is generally opened by the appropriate minister's explanation of the purpose of the legislation and its relation to existing laws. This may be a perfunctory exposition, since the upper house cannot alter a money bill anyway, and any amendments to ordinary bills can be struck down by the Government majority in the Dáil. Only one amendment is in order, and that is one to substitute for the bill some special reason against its being read a second time.

The third stage is the committee stage, which may be taken either in the committee of the whole house, as is the usual case, or in a select or special committee, which has not regularly been found necessary. A select committee is empowered to send for persons, papers, or records. In committee, whether of the whole or otherwise, a bill is considered section by section. Any section of an ordinary bill may be amended in committee or new sections inserted. In the case of finance bills, of course, only recommendations for the Dáil may be inserted.

When a bill is reported out of committee, it goes to the fourth stage, at which time it is dealt with section by section, the debate turning upon matters of detail. Amendments to ordinary bills and recommendations as to finance bills are debated and voted upon in their proper order in relation to the sections and sub-sections under consideration. When Government bills are in the fourth stage, a minister or a parliamentary secretary (although not a member of the senate) may move an amendment; but it

[35] *Standing Orders of Seanad Eireann Relative to Public Business*, 1938, Sec. 36.

must be proposed from the chair, and it must be seconded. When amendments have been disposed of, the question is put that the bill be received for final consideration (the fifth stage), and a day is appointed. Often the fourth and fifth stages—or even the third, fourth, and fifth stages—of a bill are disposed of on the same day by unanimous consent; although a single member can delay a bill for a week by refusing to proceed to the next stage. During the last stage, the question relating to a bill other than a money bill is that the bill do now pass. In the case of a certified money bill, the question is that the bill be returned to the Dáil. No amendment or recommendation other than a verbal amendment may be made during the fifth stage.

The work of the senate is hardly typical of that of an ordinary deliberative assembly. Relatively few amendments or recommendations are proposed, and these are commonly withdrawn if the minister present indicates that the Government will not accept them. The basic work of the senate during the first two years of its existence has been that of airing various questions which the senators consider important and pertinent to the bills under discussion. The burden of debate is carried by the Government's opposition, the members of which are afforded an opportunity to attack policy. The debates, usually intensely controversial, turn on matters of policy and the larger questions of the day.

When the Seanad first convened in May, 1938, a number of bills necessary for implementing the recently concluded Anglo-Irish Agreements, and already passed by the Dáil, were explained to the upper chamber by An Taoiseach. After thorough discussion, these either were passed by the Seanad without amendment (non-money bills) or were returned to the Dáil without recommendation for change (money bills). After twice attempting to amend one of these measures—the Prices Commission (Extension of Functions) Bill, 1938—the movers of the amendments in both instances withdrew them.

The finance bill for 1938 and the appropriation bill for the same year were returned to the Dáil after lengthy debate without recommendation. Senator Sir John Keane introduced a recommendation to delete one subsection of the finance bill, but withdrew it after consultation with administrative officers of the Revenue Department. Other bills passed without amendment and finance bills returned without recommendation for change included: Slaughtered and Detained Animals Compensation (No. 2) Bill, 1938; Public Charitable Hospitals (Amendment) Bill, 1938; Presidential Establishment Bill, 1938; Old Age Pensions Bill, 1938; Industrial Alcohol (No. 2) Bill, 1938; and the Telephone Capital Bill, 1938. The Seanad nevertheless refused to be stampeded; it would not pass the Presidential Establishment Bill on a day when some members had not yet received copies. A local government bill was the occasion for an attack on centralized control of local units. A motion for an inquiry into the state

of agriculture—a recurring issue in Ireland—precipitated violent argument, although eventually withdrawn. Sessions of the upper chamber were closely geared to those of the lower; an average of two sittings a week permitted the Seanad to keep abreast of the work of the Dail.[36]

Subsequent to the general election in the summer of 1938, a long recess lasted from September to November. Then the second session commenced in earnest. The Insurance (Amendment) Bill, 1938, was passed without amendment. In committee stage, the Seanad was disposed to amend the Agricultural Produce (Eggs) No. 2 Bill, 1938, in order to get additional protection for the individual against the regulatory power proposed for the Department of Agriculture. However, all proposed amendments were either withdrawn or defeated during this stage. Later, the Minister for Agriculture introduced during the report stage several amendments which in effect met the points raised by some of the previously defeated senate amendments. Still later, the Dáil agreed to these amendments which had been moved by the responsible minister. This indicates an advisory type of action on the part of the upper house which is perhaps, in addition to general debate on principle, its distinctive contribution. Between committee and report stages, a minister can, and sometimes does, make up his mind to accept and redraft certain amendments advanced by individual senators.

The Oireachtas (Allowances to Members) Bill, 1938, underwent long scrutiny in the senate which centered around the proposed increase in allowances to Dáil members from £30 to £40 a month and the fixing of senatorial allowances at £30 a month. Senator MacDermot offered recommendations to reduce each of these figures by £10, but both were defeated. Likewise defeated was his proposal to apply the income tax to these figures. A similar type of debate was engendered over salary figures in the Ministerial and Parliamentary Offices Bill, but in the long run no recommendations for change were made. The Seanad gave careful consideration to the Holidays (Employees) Bill, 1938, and a considerable number of substantive amendments were introduced, but later withdrawn. A half-dozen technical amendments, largely of a drafting nature, were made, and were subsequently accepted by Dáil Eireann. Bills passed without amendment or recommendation included Housing (Amendment) Bill, 1939; Defence Forces (Temporary Provisions) Bill, 1939; Tariff Commission (Repeal) Bill, 1939; Trade Loans (Guarantee) Bill, 1938; Hospitals Bill, 1938; and Local Government (Amendment) Bill, 1939.

During 1939, the doctrine of force and violence again reared its head in Irish national life, with bombings in England by groups generally described as the Irish Republican Army. Renewed activity by agencies outside the organized structure of the state caused the Government to introduce in the Dáil two vital bills: the Treason Bill and the Offences

[36] Seanad Eireann, *Parliamentary Debates*, 1938, Vol. 21.

against the State Bill. When these measures came before the Seanad, they were examined minutely, both as to principle and as to detail. One technical amendment made to the Treason Bill was accepted by the Dáil. The Offences against the State Bill was really a return to the principle of the Public Safety Acts employed during the Cosgrave administration. In presenting the bill on second stage, the minister for justice expressed his willingness to meet the senators half way as to amendments which they deemed essential to the major purpose. Several amendments were forthcoming during the committee stage, and on report stage some eight Government amendments were put down by the chair and accepted by the Seanad and Dáil. The closing business before the summer recess in 1939 was a debate introduced by a motion from Independent Senators MacDermot and Tierney requesting "an explicit statement from the Government as to the justifiability and expediency of bombing activities in Great Britain by Irish citizens." An Taoiseach replied by asserting the Government's determination to put down this challenge to the properly constituted authorities in Ireland. In unmeasured terms, he denounced the use of force as both unjustifiable and inexpedient, and called it a setback to official efforts in putting relations with England on such a basis as would eventually end Partition. Beyond this, he gave assurance of the Government's intentions to see that "no organization here of a military character other than the forces of the State will be permitted to exist if we can help it."[37] Other important bills to which the Seanad devoted much time during its second session were the Fisheries Bill, 1938; the Land Bill, 1939; the Tourist Traffic Bill, 1938; and the Town and Regional Planning (Amendment) Bill, 1938. After the Seanad adjourned on July 26, 1939, for the summer, the Dáil met for a one-hour session on August 1 and agreed to various amendments made by the Seanad to the Public Assistance Bill, the Land Bill, and the Waterford City Management Bill. These amendments had previously been moved for or accepted by the respective ministers in the Seanad.[38]

The Seanad has been, to date, a reviewing and advisory body. While it can save the Government from technical errors in this capacity, it cannot possibly deflect a strong Government such as the present one from any of its major undertakings. Nor was it ever intended that it should do so. Further, it can function to good purpose in giving the Government a second chance to patch up its own legislation. In the interim between passage of a bill by the Dáil and the committee or report stages in the Seanad, a minister and his technical staff can comb a measure for *non-sequiturs* and file appropriate Government amendments. Again, the committee stage in the Seanad may give rise to senatorial amendments which the minister may see fit to accept tacitly or otherwise, in whole or in part. If

[37] Seanad Eireann, *Parliamentary Debates*, 26th July, 1939, pp. 955–1010.
[38] *Ibid.*, 1938–1939, Vol. 22.

the results are considered in the light of the original intentions regarding the new body, certain purposes have not been fulfilled. To date, the body has played no part in delaying legislation for the stated period; nor has the constitutional power to initiate legislation as yet been exercised. So far, the Seanad's work cannot be classified as truly vocational.

In the adoption of functionalism in Ireland, such divergent influences as the papal encyclicals and syndicalism were at work. Unlike the pre-war French syndicalists, however, de Valera did not set up the functional Irish chamber out of any grievance against the usual parliamentary method.[39] Dáil Eireann continues to provide representation on the basis of individuals. Vocationalism has been incorporated in the Irish legislature, not as a substitute for anything, but as an adjunct to the customary democratic electoral process. What motivated the advocacy of functionalism by the French syndicalists and by the English guild socialists was the desire for direct intervention of new economic interests. It was their belief that common interests could be represented to better purpose than isolated individuals. Such a purely economic preoccupation hardly underlay the Irish senatorial scheme, because the "interests and services" accorded recognition by the *Bunreacht* include with the economic fields" national language and culture, literature, art, education . . . professional interests . . . public administration and social service, including voluntary social activities."[40]

On the contrary, it may be that the Irish functional chamber will serve to divide the economic interests of certain factions. The expansion of government activities today naturally arouses the attention of industrial and agricultural groups. Some governments have taken the occasion to secure expert, technical advice from vocational affiliations. In the absence of official, functional recognition, the economic factions have organized political parties and thus obtained representation, economic groups becoming identified with political faction. Such an alignment does not accord with the true Catholic state, since it bifurcates society horizontally. Until recently, Ireland had nothing to fear from such a split, since her political parties diverged over external affairs rather than internal. During the preparations for the first election to the vocational senate came the Labor party's decision to withdraw. Paradoxically, it had been the Irish Labor party that, during debate over the first constitution, had proposed some form of economic group representation in the Dáil. Just after adoption of the new constitution, de Valera said: "Some Labour leaders

[39] The constitution does not, of course, provide for an exclusively functional assembly, since 11 of the 60 members are chosen by the executive and six by the universities. Moreover, vocational associations control only the nominations, not the elections, which are in the hands of political groups.

[40] *Bunreacht na hEireann*, 1937, Art. 18, sec. 7.

have said that we were opposed to trades unionism. That is not true. We would like to see vocational organization extended in this country, and in so far as the Government can foster the extension of it we intend to do so; but we have in mind a very clear distinction between trade unionism and a political Labour party."[41]

The influence, if not the application, of the papal encyclicals becomes clear at this point. In the pontifical letter *Quadragesimo Anno*, given out by Pope Pius XI in 1931 on the fortieth anniversary of Pope Leo XIII's encyclical *Rerum Novarum*, the earlier admonitions concerning the social order are reaffirmed. "History attests what excellent results were effected by the Artificers' Guilds of a former day. . . . Such associations should be adapted to the requirements of the age in which we live. . . ."[42] By bringing together employers and employees in one fraternity, by making vertical divisions between industries organized as guilds, the two classes may be brought closer together. Referring to his predecessor, Pius XI, said: " . . . he attributed prime importance to societies consisting either of workmen alone or of workingmen and employers together." Also: "No less praise is due to those leaders of workingmen's organizations who, sacrificing their own interests, and anxious only for the good of their companions, strive with prudence to bring their just demands into harmony with the prosperity of their entire vocational group. . . . "[43] Although the explicit citation of encyclical precepts to explain political activities is an old fallacy, the philosophy of a Catholic state indubitably underlies the Irish constitution.

It is the actual composition of a legislative body that determines the extent of its powers. Whatever the grant or authorization, the ability to exercise it depends upon the intrinsic character of the legislative chamber. What attribute is it that produces this element of prestige? If a legislative chamber is tied to the people of a democracy by direct election, if it is continuously representative of them, then it is that members may, relying upon their mandate under popular sovereignty, go to great lengths. It is when a governing body ceases to respond to the popular will that its stature dwindles, its powers atrophy. Such a house soon becomes an anachronism. The early popular assemblies summoned by monarchs and arranged by class lines do not appear powerful in comparison with their modern counterparts. In one sense, their membership was functional, since feudal social divisions corresponded roughly with the chief vocations: lords spiritual came for the church; the peasants for agriculture; lords temporal represented secular ownership. Then, as now, economic interests in vocational representation lay at the foundation of the system.

[41] *The Irish Press*, June 8, 1938.
[42] Pope Leo XIII, *Rerum Novarum* (Paulist Press, 1891).
[43] See *N. Y. Times*, May 24, 1931, for *Quadragesimo Anno*.

Since the period of these historical assemblies when vocationalism was represented, whether by name or not, legislative bodies have changed the basis of their membership. As chambers based on individual, direct representation, they have become stronger, more vital to the governing process. The modern revival of functionalism has not yet brought much more power to its offshoots than was manifest in the Middle Ages, whatever the intentions behind the various examples of it.

In Ireland, the new senate affords the rare example of functional representatives participating directly rather than indirectly through purely advisory bodies in the legislative process. There is no guarantee for the future, of course, that the belief in vocationalism and the belief in bicameralism will be bound up together. The movement towards social organization and the desire for an upper house are two distinct ideas which grew up independently. Seanad Eireann, as at present constituted, has not been relegated to a merely advisory capacity removed from primary power. Though not as instrumental as the Dáil, and though not tied to the people by direct election, the upper house has a definite part to play in the government of the country. Unlike other modern instances of vocationalism, this experiment has not been thus elaborately planned only to be rendered meaningless by an executive autocracy. However, the history of the vocational legislature, past and present, does not hold promise of primary power. The disinclination to social regimentation and the present state of economic disorientation are circumstances which add further difficulties. It is clear from the grant of powers in the constitution that the Seanad has no chance of becoming strong enough on any matters, economic or otherwise, to jeopardize the will of the Dáil. Nor, since it must be dissolved with dissolution of the Dáil, is it likely again to outlast a political turn-over in the country, thereby opposing its out-of-date majority to one *au courant* with the people. The belief in a devolution of certain tasks upon functional representatives nevertheless persists as a profoundly held theory, sanctioned by the Roman Catholic Church and favored by the present Government. To ward off the fate of its predecessor, Seanad Eireann must not become a pale copy of Dáil Eireann, tolerated only for its inefficacy and sentenced as soon as it stirs. If the embryo economic organization within the country permits the new upper house to fulfill the purpose outlined for it by *Bunreacht na hEireann*, the temptation to political duplication of Dáil Eireann will be overcome.[44]

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[44] Appreciation is expressed for the numerous courtesies of Professor Felix E. Hackett, Senator Helena Concannon, Senator Desmond Fitzgerald, Senator Michael Tierney, Mr. Seán Malone, clerk of the Senate, and Mr. Wilfrid Brown, Senate returning officer.

The Historical Meaning of the American Doctrine of Isolation. The classic definition of American isolation is that it is not a theory but a predicament. In all seriousness, isolation is not a theory of American foreign policy. Isolation is a theory about a theory of American foreign policy. Because this interpretation is a poor theory, misrepresentative even if taken only semi-literally, it has placed the discussion of American foreign policy in a sad predicament of obfuscation, not without its influence upon national decisions.

In relation to the two extremes of isolation and internationalism, America's present course is, in the words of Secretary Hull, a "middle course."[1] Washington's advice to have "as little *political* connection as possible," which is definitive of early policy, is shown by its context to mean merely the avoidance of permanent alliances beyond the existing French treaty. Perhaps the only reference to isolation in the classic statements of American foreign policy is in Seward's assertion that a course based upon Washington's counsel seems one of isolation if "superficially viewed."[2] Isolation as a superficial description of American policy was the coinage, not of advocates of reserve, but of opponents seeking to discredit them by exaggeration. About the middle of the nineteenth century, interventionists, desirous that "Young America" help actively Europe's revolutionary liberalism, called upon those less rash than themselves for an abandonment of "isolation," and thus for the first time identified it not merely with a geographical situation but with a theory of foreign relations. The further history of the term exhibits the increasing use by anti-isolationists of this conscious or unconscious strategy, the repeated denunciation of it not only by adherents of moderate reserve but by "irreconciliables" as well, and, finally and only rather recently, the bravado or thoughtlessness of an extremist minority in accepting a label that misrepresented even them. If, together with the other spectators, diplomatic historians came to use the word, it was only because they were well aware that mere scholars can change no social habit.

The concept of isolation is useful only in so far as it indicates the misunderstanding of an ideology, serves as a point of departure for investigation, and contains in its connotation certain suggestive half-truths. The history of American foreign policy, while abundant in economic and social collaboration, does exhibit what Secretary Forsyth called a "national reserve,"[3] a deliberate and more or less regular abstention from certain political relationships usually considered instrumental to either interest or duty. The scope of this reserve can as easily be underestimated as over-

[1] *New York Times*, Sept. 21, 1937.

[2] J. B. Moore, *Digest of International Law*, VI, p. 23.

[3] *Ibid.*, p. 348.

estimated; in its fully developed form, it comprises no less than eight distinct policies, prohibitions of broad types of international action. At the same time, the advocates of relative aloofness have generally considered that their complex ideology centers in one Washingtonian ideal, an objective to be pursued by divers paths and for various reasons. This assumption was by no means an illusion, and the reality behind it was something much more than an undefined ideal of reserve or an undefinable maxim of minding our own business. Amazingly broad and persistent in its influence, a principle existed that was used to discriminate between injurious international relationships and those innocuous, to convey the common attribute of all that are injurious, and to define generally America's desirable relation to the world. This principle is the counterpart in reality of the mythical doctrine of isolation; but, unlike isolation, it makes sense; indeed this American folk product is an important, and certainly in some measure wise, contribution to the ideology of nationalism.

So far from isolation is the so-called isolationist's ideal that its inmost essence is something desired by all peoples. The ideal is the non-juridical counterpart of sovereignty and, as regards its parentage, a blood-brother of sovereignty. A nation's insistence upon sole authorship of its legal acts derives from the natural desire of every people for maximum self-determination, which is identified with the probability of attaining maximum interest and dignity. Unfortunately, however, sovereignty does not ensure freedom from alien interference except in a Christian world or a world where but one nation is sovereign. Limitations of freedom of action arise in the first place from the hostile or competitive impacts of other nations. Accordingly, there ensues a paradox: for the very sake of maximum self-determination—or for independence itself, as in America's alliance with France—nations have traditionally entered into agreements of mutual aid that limit self-determination by imposing reciprocal obligations and consequently interconnections of experience.

But there are conditions under which the dominative phase of this ambivalent system may appear more evil than its liberative phase may seem good. While long before American independence such conditions had prompted notable reserve, the determinants of the new life in the West were peculiar in a fashion that disposed Americans, and incipiently even those of colonial times, to a scarcely precedented transvaluation of values that had been generally predominant in Western international relations. A geographical detachment, a virgin continent, and cultural-institutional divergencies were reflected in political thinking in a sense of relative security, in the conviction of having interests different from Europe's, and in a political theory that made of freedom almost the key to all good. Influenced by such factors, Americans expressed their view of the alliance-system in the virtually novel application to it of a certain pejora-

tive term, the most common and significant in the history of American isolationism: "entangling" or "entanglement." An entanglement, in international life as in the love life, is not a mere association but a relationship so intimate that two destinies become intertwined—and by implication not for better but for worse.

The conception of alliances as entanglements appeared as early as 1775 in the nationalistic and wary thought of John Adams, who, though yielding later to necessity, was apprehensive that an alliance with France would destroy our "real" independence in both domestic and foreign affairs.[4] But the most influential warning against such relationships in terms of entanglement was in the Farewell Address, which posed the rhetorical question: "Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice?" Because "Europe has a set of primary interests which to us have none or a very remote relation," that is, interests rooted in aggressiveness or imperilment and foreign to a nation of "detached and distant situation," permanent alliances committed America to "frequent controversies, the causes of which are essentially foreign to our concerns." At the same time, such alliances injured what was primary in our concern, the interest of true independence. In the youth of the nation, peace alone would permit uninterrupted progression to "that degree of strength and consistency which is necessary to give it, humanly speaking, the command of its own fortunes."[5] This self-determination included not only the ability to choose peace or war according to interest, but also freedom from foreign influence and interference—values heightened by the traumatic experiences of the French alliance and by the danger of a tightening of that alliance.

Washington had given forth an idea that, while garbed originally in the meager rule of avoiding permanent alliances, was destined to outgrow its breeches. As the forms of international relationship increased and as new issues presented themselves, Americans became aware that the attribute of entanglement was not peculiar to alliances, but must be watched for throughout international life. Thus, abstracted from its multiplying applications, the counsel of Washington and Jefferson became known as the principle of avoiding foreign entanglements, or more briefly as the doctrine of non-entanglement. Though all the applications of the principle

[4] *Works of John Adams*, ed. C. F. Adams (Boston, 1851), II p. 506. This passage containing the word "entangle" was written in later years, but in alleged reproduction of Adams' observations in the Continental Congress in 1775 and 1776. The earliest official use of the term is apparently in the resolution of the Continental Congress, in June, 1783, withdrawing its previous proposal for America's membership in the League of Neutrals. Francis Wharton, *Revolutionary Diplomatic Correspondence of the United States*, VI, p. 482.

[5] Richardson, *Messages and Papers of the Presidents*, I, pp. 213–216.

consist of prohibitions, its positive aspect was described by Senator Borah, typically and with approximate accuracy, as "freedom of action."[6]

That the definition falls short of complete accuracy is shown by isolationists themselves when they support neutrality legislation that is a self-restriction. What is really envisaged in non-entanglement is freedom of action in so far as it is preserved through the avoidance of certain relationships with others. However, though all treaties are restrictive, by no means are all regarded as sources of entanglement. The reason is that the true criterion of entanglement is the seriousness of the limitation of freedom from the viewpoint of what is considered vital. While this criterion permits of many commitments, it at the same time forbids certain actions that do not rest upon any commitment. International action frequently entails moral obligations or compulsive external consequences by virtue of which, to quote an early isolationist, "without any formal compact, a nation may find itself as completely entangled . . . as by a solemn treaty stipulation."[7] In sum, non-entanglement is the absence of voluntarily incurred relationships, formal or informal, which remove the substantial control of the nation's action, or even of its experience, from its own choice by placing it in the will, influence, or career of other nations.

This ideal first gained acceptance, not as a sentimentalization of freedom, but rather as a theory of national interest which held that all vital interests, and especially peace, flourish best when detached, in so far as possible through maintaining freedom of action, from the fate of the interests of the others. While some of Washington's arguments lost pertinence in changed conditions, broader grounds were suggested to Americans by all elements of their shrewdness and folly as they observed both a national history that seemed to prosper through independent action and a course of world politics that often shocked and never reassured them. Basic assumptions were America's relative self-sufficiency, the greater or less divergence between its uniquely determined interests and those of others, and its superiority, estimated from slight to tremendous, in respect to goodness, good sense, or at least good fortune.

In a later phase, first prominent with John Quincy Adams' justification of non-intervention in foreign wars for freedom, the principle became also a sincere, or at least professed, theory of national duty. It maintained that America could save the world only if it remained free to save itself, and, in respect to service more active than radiating moral influence, if it maintained its liberty to select time, place, and method. Finally, with the maturity or hypertrophy of American nationalism, which like all nationalism has mystical elements beyond both interest and virtue, a new em-

[6] "American Foreign Policy in a Nationalistic World," *Foreign Affairs*, Vol. 12, p. xi (January, 1934, Suppl.).

[7] *Debates in Congress*, 1826, Vol. II, pt. 2, p. 2018.

phasis became prominent: non-entanglement as an end in itself. Freedom from foreign mortgage upon America's life was identified with the dignity, the glory, and, in the case of numerous amateur jurists, even the full sovereignty, of the nation.

To be sure, isolationists have motives as far removed from this ideal as is the determination of some fiercely proud senator to take vengeance upon President Wilson for being more successful than himself in both politics and literary style. But from the viewpoint of isolationism as an ideology, the policies of reserve are the successively emerging and developing embodiments of non-entanglement, an ideal that is incarnated only in its aversions:

1. *Entangling alliances with none.* Leaving Washington in the position of semi-isolationist, a progressive caution interdicted successively American as well as European permanent alliances, temporary alliances, informal alliances, implicit alliances, and, though not until 1920, a type of engagement that Wilson considered "disentangling" because it was made with all nations in behalf of world peace. The pervasive objection to all commitments to the use of force was that "every alliance is . . . entangling which places our peace on the discretion or movements of any other government."[8]

2. *Non-intervention.* Exceeding greatly the prohibitions of international law, this policy forbids not merely participation in foreign conflicts, but any trespass upon the external or internal sovereignty of others that is not warranted by defense of serious national rights. Intrusive force was regarded as a boomerang that endangered America's own sovereignty or chosen way of life in either or both of two ways: the provocation of counter-intervention, especially feared in our early history, or the plunging of the nation into a swift and uncontrollable current of foreign life that carries it away from the moorings of all its values.

3. *Non-interference and non-participation in European politics.* While the principle of non-intervention is merely intensified, a novel element is the prohibition of even peaceful and neutral action in matters pertaining wholly or primarily to the politics of Europe or to their ramifications in other areas. Connected in its origin with the rise of the Spanish-American republics, the policy centered in an ideal of hemispheric self-determination: in return for our abnegation in relation to the Old World, Europe was to refrain from participation as well as intervention in American affairs, and thus leave unimpaired not only this nation's security but also its freedom of action in its own hemisphere.

4. *Avoidance of joint action.* Such action, which, as distinguished from coincident or concerted action, has an aspect of unity, is forbidden both

[8] *Ibid.*, p. 2323.

in relations with other Powers and in the exercise of administrative obligations. Examples are commonly subscribed interposition or intervention, international maintenance of the Monroe Doctrine, and *condominia* over backward regions or an isthmian canal. All partnership, even that which is *ad hoc* or lacking in formal obligation, is considered entangling because it involves moral obligations, a pooling of interests, and responsibility for the partner's acts.

5. *No entangling commitments.* The principle of freedom of action in unknown contingencies, first associated with the no-alliance rule, became a criterion applied to all commitments and prohibited those which impaired future self-determination too greatly or which lay in spheres where circumstances are especially variable. In its procedural phase, the policy led earlier American statesmen to shrink from indissoluble, long-term, multipartite, and not quite essential treaties. In its substantive phase, largely still extant, the principle was manifested in reluctance to bind the future in issues with such changing contexts as expansion, arbitration, and the commitment to support or oppose other Powers in any way.

6. *Non-limitation of "essential" rights of sovereignty.* Jurisdictional control and self-defense, while rights claimed by all sovereignty, have had in American interpretation a scope reflecting, not conventional jurisprudence or prudence, but an extreme reluctance to fetter action upon more or less important interests. American reserve towards self-limitation in joint or collective interest, however lessened in recent times, has been manifested in unwillingness to permit any alien determination of what domestic questions and self-defense (or the Monroe Doctrine) are; in exclusions of immigration and tariff policies from the range of international agreement; and in disapproval of the League commitments to suspend resort to war and to limit national control over armament and the trade in arms.

7. *Independence of any political "super-authority."* The blind commitment to accept the authority of any political body, whether the League of Nations, its alleged adjunct, the World Court, or even a temporary congress, is regarded as not only empowering others to do us evil but as surrendering our very sovereignty. Though particular repugnance is aroused by formal obligation to accept a majority decision, the concept of external domination is so broad as to include mere recommendation, regarded as a source of moral obligation, and, indeed, on the logic of nationalist emotion, even membership in a "super-authority" without any authority.

8. *Insulation against entanglement.* This policy, which accounts for the most articulate isolationism of today, is distinctive in that it interdicts, not a definite entanglement, but all action or lack of action creating a serious danger that temptation or necessity will lead to any entangle-

ment. Transgression of this principle of due caution is like sin—something to be recognized in the particular even though one does not know what it is in general. At one time, conformity to the principle dictated chiefly the avoidance in various ways—the Monroe Doctrine, continental expansion, and anti-expansionism in relation to Europe and Asia—of magnetic proximity to areas of world politics. Today the principal concern is an isolation from war (the phrase of President Roosevelt) that consists chiefly in avoiding incident-producing economic relationships with distant belligerents.

America's *Index Actionum Prohibitarum* ends at a point that leaves, believe it or not, at least as much outside as within. Permissible because lacking in commitment or meddlesomeness is all single-handed action, from interposition to war, in behalf of national rights, and, when in accord with comity, in behalf of world interest; moreover, even intervention in behalf of world interest is allowable when there is a coincident national equity. Nor is entanglement seen in free international collaboration such as consultation and coincident action. Those commitments are permissible that do not involve vital political interests demanding flexibility: for example, commitments in respect to economic and humanitarian issues, renunciation of aggression, and consultation. Further, aside from the fact that virtually all of the policies have been subject to exceptions in emergency, more can be tolerated by America's *Index* than appears on its face or on the record. First, certain relations were condemned on bad and reversible judicial logic, such as the assumption that the World Court is not a true judicial body. Second, many of the terms of the policies are vague, and thus play into the hands of a good lawyer able to take advantage of legal ambiguities. Finally, since the concept of substantial alien determination underlying all of the policies is also vague, the continuance of any is subject to the fact that, fundamentally, nothing is entangling or disentangling but thinking makes it so.

Of course, there have been and are extremists, more vocal than numerous, from whom in some mood scarcely any of the traditional liberties is safe. They operate partly by misinterpreting the basic policies, but chiefly by carrying the indefinite preventive policy to what seems to others a morbidity of caution. Some of their phobias—if in a truly terrifying world any fear is a phobia—are the following: extensive commerce, which may lead to political connections; free but parallel action, which, like free love, may lead to marriage or a quarrel; and a French officer's riding in one of our better planes, which may lead to moving America's frontier to France. In their distrust of all other nations—a possible exception is little Finland—some of these super-isolationists verge upon maintaining that international society is a wanton, and that not even if the American marries the wench can he make an honest woman of her.

By no means slight, however, is their distrust of at least one of their fellow-Americans, the Chief Executive.

Yet the President has prayed that America may remain "unentangled and free,"[9] and in general the many coöperative measures of the Administration, as Secretary Hull emphasizes, lie "strictly within the range of our traditional policies of non-entanglement."[10] Some measures, however, have been cases of squeezing agilely through loopholes in these policies. Thus the ostensible conduct of our own business has been given such form and so timed as to have the effect of economic intervention unneutral toward aggressors. Worse than the acts of this Administration have been its speeches. Nothing in tradition forbidding the speaking of one's mind *en famille*, this safe medium has been used to accomplish the purpose of diplomatic intervention, and even of threatening aggressors with "measures short of war." Worst of all from the viewpoint of isolationism, the advantage and duty of international collaboration have been argued in terms of a Wilsonian ideology that derives them from, of all things, the ideal of self-determination. The new interpretation of this ideal emphasizes the interference with self-determination that is threatened by a now far-flung spirit of aggression, which, in the words of President Roosevelt, places "the deadline of danger" not "within our control" but "in the hands of other nations."[11] In contrast to the old theory that America's peace is distinct from that of others, it is now posited that "when peace has been broken anywhere, peace of all nations everywhere is in danger"[12]—in other words, that America shares with an interdependent world the primary interest of world peace.

The ideal of non-entanglement, dogma though it was, has been but one prolonged phase of a triadic dialectical development: the thesis, continuing ancient political tradition, is self-determination as achieved through the French alliance; the antithesis is self-determination as achieved through non-entanglement; the synthesis, which is now at least in emergence, is self-determination as achieved through both non-entanglement and international relationship. In this synthesis, each element appears in a modification reflecting the influence of the other. International relationship is not special, but collective; freedom of action is not merely nationalistic, but is also designed with regard to international welfare.

The potentiality of America's incipient internationalism can scarcely be weighed at this exceptional moment, when a war in Europe so naturally arouses, not, indeed, our neutrality of feeling, but all the discretion of our inveterate non-interventionism. But a test will be put upon us by

[9] *New York Times*, Oct. 3, 1935.
[10] U.S. Dept. of State, Publication 1225, p. 7.
[11] Congressional message of January 4, 1939.
[12] President Franklin D. Roosevelt, radio address of September 3, 1939.

the issue of post-war reconstruction that lies ahead if the victors are to be our friends. This issue may not demand America's decision whether or not to abandon any of its traditional policies of reserve—and for the simple reason that the leeway allowed by tradition might well suffice for all moderate ends of international organization. The issue will certainly demand a decision whether to utilize fully this leeway or to yield to further barriers proposed by pseudo-traditionalist extremists. In appraising meliorative collaboration by the standard of national tradition, Americans may do well to consider that the true objective of their historic caution was not isolation, a friendlessness which may subject their destiny to their enemies, but an ideal interpreted to the nation by Washington as "the command of its own fortunes."

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

As announced previously in these pages, the thirty-sixth annual meeting of the American Political Science Association will be held in Chicago on December 27–30, with headquarters at the Palmer House. The work of the committee on program (Professor W. Brooke Graves, chairman) was started promptly after the close of the 1939 annual meeting, and hence the program's form and substance are now well developed. Some modifications may be made, however, in the scheduling of sessions dealing with administrative subjects as the details of coöperation with the program committee of the American Society for Public Administration are worked out. Due to the greatly increased attendance at recent annual meetings, more round table and section meetings are scheduled than ever before; and most of them are listed for two sessions each. It is believed that this plan will help to keep down the size of individual meetings, and that it will provide, at each meeting hour, something of interest to every member of the Association attending the meeting.

General Sessions. Distinguished speakers for three luncheon meetings and one dinner meeting have been invited. While none of them has refused, none has been willing to commit himself definitely so far in advance, and consequently it seems best not to publish the names. The following large section meetings are scheduled to run simultaneously on Friday afternoon, with chairmen as indicated: European Affairs, Raymond Leslie Buell (*Fortune Magazine*); Congress, chairman invited: De Tocqueville anniversary meeting, Phillips Bradley (Queens College); National Defense, William Y. Elliott (Harvard University). The presidential address will be presented Saturday evening, and on Sunday evening a distinguished group of speakers will discuss politics and ethics, under the chairmanship of Francis G. Wilson (University of Illinois).

Section Meetings. Section meetings will be held on Friday morning and Saturday afternoon. The following subjects and chairmen have been definitely scheduled: (1) Far Eastern Affairs, Harold S. Quigley (University of Minnesota); (2) Financial and Budgetary Administration, Donald C. Stone (Executive Office of the President); (3) Government and Business, Charles C. Rohlfing (University of Pennsylvania); (4) International Law, Frederick S. Dunn (Yale University) and International Relations, Robert R. Wilson (Duke University); (5) Latin American Affairs, Chester Lloyd Jones (University of Wisconsin); (6) Legislation and Legislative Procedure, Frederick H. Guild (Kansas Legislative Council); (7) Political Parties and Elections, E. E. Schattschneider (Wesleyan University); (8) Political Theory, Benjamin F. Wright

(Harvard University); (9) Public Law, Oliver P. Field (Indiana University); (10) Recent Developments in Citizen Organization, Harold M. Dorr (University of Michigan); (11) State Government, Lloyd M. Short (University of Minnesota) and Hubert R. Gallagher (Council of State Governments).

Round Tables. Round-table meetings are scheduled for Saturday morning and Monday morning, with the following subjects and chairmen: (1) American Foreign Policy, Walter H. C. Laves (University of Chicago); (2) Administration under American Federalism, Arthur Macmahon (Columia University); (3) Local Government, Charles M. Kneier and Clyde F. Snider (University of Illinois); (4) Problems in Personnel Administration, Arthur S. Fleming (United States Civil Service Commission); (5) Planning Activities in the Federal Government, George B. Galloway (Social and Economic Planning Association); (6) A Post-Mortem of the 1940 Election, E. Allen Helms (Ohio State University); (7) The Problem of the Public Debt, Simeon E. Leland (University of Chicago); (8) Public Opinion and Propaganda, Harwood L. Childs (Princeton University); (9) Public Reporting, James L. McCamy (United States Department of Agriculture); (10) Relation of Political Science to Other Disciplines, Ernest S. Griffith (American University); (11) Teaching Problems in Political Science, Francis O. Wilcox (University of Louisville) and Howard White (Miami University).

After forty years as a member of the University of Chicago faculty, Professor Charles E. Merriam has been succeeded as Morton D. Hull distinguished service professor by Professor Jacob Viner and has become professor *emeritus*. In the autumn, he will deliver the Godkin lectures, and during the second semester serve as visiting professor, at Harvard University.

Professor E. O. Stene, of the University of Kansas, has been chosen editor of the government section of the *Southwestern Social Science Quarterly*.

During the coming summer, Dr. Clyde F. Snider, of the University of Illinois, will be associated with the Illinois Legislative Council in the preparation of a research report on local government.

After a year spent at the University of Hawaii, Professor Edmund F. Spellacy will resume teaching at the University of Washington next fall.

Professor Donald H. Webster, of the University of Washington, has been appointed technical adviser to the Columbia Basin Planning Commission.

Professor Lane W. Lancaster, of the University of Nebraska, will offer

courses on comparative government in the coming summer session of Northwestern University.

Professor V. O. Key, Jr., of the Johns Hopkins University, has been elected a member of the board of trustees of the Baltimore Commission on Governmental Efficiency and Economy.

At Wellesley College, political science has been given the status of a separate department.

From the estate of the late Theodore Stanfield, Harvard University will receive the sum of $250,000 for the establishment of a "Stanfield chair for international peace."

During the coming year, Professor John McDiarmid, of the University of Southern California, will be associated with his brother, Dr. E. W. McDiarmid, in a study of public library administration, on the basis of a grant from the Carnegie Corporation to the University of Illinois.

Professor Thomas S. Kerr, head of the department of political science and dean of the college of letters and science at the University of Idaho, has been appointed by Governor Bottolfsen to serve on the state board of public welfare, and has been elected chairman for the current year.

At the University of Wisconsin, Dr. William Ebenstein has been promoted to an assistant professorship, and Dr. William Beard, formerly of the California Institute of Technology and more recently at Columbia University, has been appointed to a position of the same rank.

Dr. Frederick A. Guild, director of research for the Kansas Legislative Council, has been conducting a seminar in problems in administrative research for graduate students in the department of political science at the University of Kansas. This training is integrated with an apprenticeship in the division of research of the Kansas Legislative Council, with its facilities at the state capital.

Under the auspices of the department of political science and the graduate school, Congressman T. V. Smith spoke at Ohio State University on April 25 on "The Rôle of the Politician in Contemporary Society."

Dr. John H. Herz, of the Institute for Advanced Study, served as instructor in political science at Trinity College, Hartford, Conn., the second term of the past academic year.

Mr. L. G. Rockwell, now at Princeton University, has been appointed to an instructorship at the University of Cincinnati.

Mr. Edgar B. Cale, instructor at the University of Pennsylvania, received his doctor's degree at the University's February convocation.

Mr. Leon Sachs, of the Johns Hopkins University, will teach during the coming summer at the University of Virginia.

Drs. Dell G. Hitchner and Wallace Mendelson, who recently completed their graduate work at the University of Wisconsin, have been appointed instructors at Coe College and the University of Missouri, respectively.

By appointment of President Robert C. Brooks, Professors W. Brooke Graves (chairman), Harwood L. Childs, and Frederic A. Ogg will serve as a committee to consider and report on the advisability of publishing an annual volume of proceedings of the American Political Science Association.

Early in the second term, the University of Pennsylvania announced a series of six lectures on "Current Developments in the European War," by Robert Strausz-Hupe, associate editor of *Current History*, and under the auspices of the political science department. Following an initial background lecture, Mr. Strausz-Hupe interpreted the week-to-week developments on the diplomatic, economic, and military fronts.

The Canadian Political Science Association held its twelfth annual meeting in London, Ontario, on May 23–25, under the presidency of Professor J. C. Hemmeon, of McGill University. A joint session with the Canadian Historical Association was one feature of the program.

In coöperation with superintendents and principals of the high schools of New York State, a questionnaire is being circulated among the students of the graduating classes, the purpose being to determine the attitudes of these young people toward practical politics and the public service, with emphasis on the former topic. The survey is in charge of Professor Herman Beyle.

The Sixteenth Institute under the Norman Wait Harris Memorial Foundation in International Relations will be held at the University of Chicago from June 25 to July 3. The subject will be "The Foundations of a More Stable World Order."

The annual Edmund J. James Lecture on Government at the University of Illinois was delivered on March 13 by Congressman T. V. Smith. The subject was "The Compromise Principle in Politics."

Mr. Louis Brownlow, director of the Public Administration Clearing House, delivered a series of three lectures on Administrative Management in the National Government at the University of Minnesota on April 10, 11, and 12. His topics were: "The Setting and the Approach to the Problem"; "Objectives of the President's Committee"; and "Results and Probable Future."

The third annual conference on current affairs was held at the University of Minnesota on April 15–18. The topic of the Conference was "Democracy Today and Tomorrow." Among the speakers were Professors Harold D. Lasswell, White Foundation, Washington, D. C.; Karl Loewenstein, Amherst College; Benjamin E. Lippincott, University of Minnesota; and Samuel G. Inman, University of Pennsylvania.

At a meeting of the Social Science Section of the Ohio College Association, held at Oberlin College on April 6–7, a session was devoted to the relations between advanced and elementary courses in political science, another to teacher training for high school social studies, and a third (among others) to Russian foreign policy.

Dr. Edmund Curtis Mower, who retired a year ago as head of the department of political science at the University of Vermont, died at his home in Burlington on April 25 at the age of seventy-one. Dr. Mower had practiced law for many years, served in the state legislature and in many varied official and civic capacities, taught in summer sessions at Northwestern University and the University of California at Los Angeles, and was author of *International Government*, published in 1931. His connection with the teaching staff of the University of Vermont dated from 1910.

Under the auspices of the National Municipal League, a conference on increasing the effectiveness of American self-government was held at Indiana University on May 13–14. Somewhat more than one hundred representatives of colleges and universities and of state and national civic organizations were in attendance. Two sessions were devoted to general aspects of the problem and three to the consideration of some forty specific projects in various parts of the country, completed or in progress. Clarence A. Dykstra, president of the University of Wisconsin and of the National Municipal League, occupied the chair.

At the request of the New York State Department of Health, the staff of the Maxwell Graduate School of Citizenship and Public Affairs at Syracuse University is offering a course in public administration especially designed for the district health officers of the state. Practically all of these officials have the medical degree as well as a certificate from a graduate school in public health. The course is of a practical character, covering features of public law, public relations, budgeting, personnel, and related topics. The district health officers have reading assignments and go to the Syracuse campus two days a month for a twelve-month period. The selection of topics and their treatment have been determined in consultation with the staff officials of the State Department of Health.

The recently organized Society for Public Administration is planning to establish, in the near future, a quarterly journal dealing with those aspects of public administration that are sufficiently general and significant to be of interest to all public officials and students of government. The editor-in-chief will be Professor Leonard D. White, of the University of Chicago, and other members of the editorial board will be Dr. Frederick F. Blachly, Brookings Institution; Dr. John B. Blandford, U. S. Bureau of the Budget; Dr. Rowland A. Egger, budget director of Virginia; Professor E. Pendleton Herring, Harvard University; Dr. Clarence E. Ridley, International City Managers' Association; and Professor Lindsay Rogers, Columbia University; with Mr. Don K. Price, Public Administration Clearing House, Chicago, as managing editor.

Several addresses on Latin-American affairs and Pan-American relations were delivered at the University of Minnesota under the auspices of the Committee on International Relations during the period April 22–29. The lecturers and their topics were: Dr. Tom Jones, University of Minnesota: "Contemporary Trends in South American Government"; Professor Chester Lloyd Jones, University of Wisconsin, "Latin America and the War"; Dr. Emilio LeFort, University of Minnesota, "Anti-Imperialism in Hispanic-American Literature"; and Dr. Ben M. Cherrington, U. S. Department of State, "Pan Americanism Today."

During the present academic year, twenty-two graduate students holding government positions or attached to government research associations have been registered for courses in the department of political science at the University of Pennsylvania. Included are employees of such national agencies as the Public Health Service, the Department of Labor, the National Youth Administration, and the Post Office Department, not to mention the government of Siam. At the state level have been employees of the Pennsylvania Department of Public Assistance, the New Jersey Department of Institutions and Agencies, and the Maryland State Department of Public Welfare. Included also have been employees of a number of governmental research and civic organizations, including the Pennsylvania Economy League, the Philadephia Bureau of Municipal Research, the Pennsylvania Community Forests Council, the Citizens' Tax League of Ohio, and the Philadelphia Voluntary Defenders Association.

President Robert C. Brooks has appointed the following as members of a committee to consider the nominating and electoral procedure of the Association, pursuant to action taken by the Executive Council at its meeting last December: Professors E. S. Corwin, Princeton University; Ralston Hayden, University of Michigan; R. G. McKelvey, Occidental

College; Roscoe Martin, University of Alabama; Louise Overacker, Wellesley College; R. R. Wilson, Duke University; and F. W. Coker, Yale University, chairman. The committee desires to know the opinions of members of the Association and hopes that suggestions for changes in the methods of nominating and electing the president and other officers of the Association will be sent promptly to the chairman or to other members of the committee.

Professor Frank M. Stewart, director of the Bureau of Governmental Research of the University of California at Los Angeles, has been named vice-chairman of the citizens' committee to study revision of the city charter of Los Angeles. He will serve also as a technical consultant to the committee, which is composed of forty-five citizens representing various groups in the community. The work of the committee will extend over several months, and will be directed toward modernization of the charter, which has been operative since 1925.

The Library Association of China has informed the American Political Science Association that the twenty sets of the REVIEW donated in 1939 have been distributed to the following universities and other institutions: National Southwest Associated University; Institute of Economics, Nankai University; National Sun Yat Sen University; National Northwest Associated University; National Northeastern University; National Central University; National University of Szechwan; National University of Yunnan; National University of Hunan; National University of Amoy; Cheeloo University; Great China University; National Chinan University; National Library of Peiping; National Central Library; Central Political Institute; Ministry of Foreign Affairs; University of Honan; National University of Kwangsi; and University of Nanking.

The second annual meeting of the Pennsylvania Political Science Association was held at Harrisburg April 19–21. Opening with a tour of the state offices, and including two subscription luncheons and a subscription dinner, the program provided for round tables (with two sessions each) on teaching the basic course in political science in Pennsylvania colleges and universities, state personnel procedures and problems, American foreign policy, and political subdivisions of Pennsylvania. Professor Robert C. Brooks, of Swarthmore College, extended the greetings of the American Political Science Association, of which he is president. The officers of the Pennsylvania Association for the year 1939–40 were Professors W. Brooke Graves, Temple University, president; Jacob Tanger, Pennsylvania State College, vice-president; and Frances Reinhold, Swarthmore College, secretary-treasurer.

The second Conference of Midwest Political Scientists was held at

Turkey Run Inn in Indiana on May 3–4, with 125 representatives from eight states in attendance. Sessions were devoted to "Problems of Teaching Political Science: Undergraduate and Graduate," "Emerging Issues of American Politics in the Domestic Field," "Emerging Issues of American Politics in the International Field," and "Aspects of Contemporary Ideology." Among those who participated in the program were John E. Briggs, W. Gurian, N. C. Leites, F. G. Wilson, J. D. Tomlinson, W. B. Ballis, Amy Gilbert, H. M. Vinacke, A. Vandenbosch, Albert Lepawsky, W. H. Combs, Earl DeLong, C. L. Heyerdahl, J. E. Kallenbach, W. G. Swartz, J. D. Kingsley, Robert Phillips, J. W. Manning, and Harold Gosnell. The 1941 managerial committee is composed of Francis G. Wilson, University of Illinois, chairman; Earl DeLong, Northwestern University; J. Donald Kingsley, Antioch College; Carl O. Smith, Wayne University; Hilda Watters, Western Illinois Teachers College; J. A. Vieg, Iowa State College; and Harold Zink, DePauw University, secretary-treasurer.

The National Civil Service Reform League (521 Fifth Avenue, New York City) is developing a program designed to win the support of existing civic, professional, and labor organizations for a nation-wide campaign to improve the civil service in all parts of the country. Since it believes that Americans are already over-organized, it hopes to unite the strength of existing organizations by bringing together representatives of them in civic councils for special attention to the civil service. To this end, the League is appointing local representatives or correspondents in every state—young business and professional men and women. These correspondents will report to the League's office the condition of public personnel selection and management in their own communities, receive from the office information and advice drawn from similar situations in other parts of the country, and seek to guide and inform their local colleagues in handling local personnel problems It is, of course, extremely important that the correspondents be selected with great care. It is desirable that they know something of the theory and practice of government, and that they be eager to increase their equipment in the service of their community. At a recent meeting of the American Political Science Association, some professors offered to recommend former students now established in business or the professions who might undertake this work. This note is submitted to the readers of the REVIEW because nearly all persons in this country who are vigorously interested in the improvement of public administration may be reached through it; and because nearly all such persons will be willing to run over their list of young and vigorous friends to see if any of them should be advised to consider undertaking this service. It seems to offer to the right kind of young people an op-

portunity and a stimulus that will benefit them as well as the community. The League will welcome recommendations. Acceptance by the correspondents will carry no obligations other than those which rest on the shoulders of all young citizens who are able to carry them. Membership in the League is not necessary. For those who wish to be connected with it without much expense is offered a one-dollar membership. They will not be asked to make contributions or raise money from others. They will merely be placed in a position to be curious about what is going on in their local governments, to discuss the subject with their friends, to send to the League requests for further information (for example, as to what is being done in other communities with problems that confront the correspondents at home), and generally to keep alive intelligent and informed discussion. Reform of the civil service has been a major issue in this country for two generations. But reform is an abnormal condition, like residence in a hospital. It should be brought to an end through accomplishment. A purpose of the League seems to be to unite all possible forces in the campaign to place public administration squarely on its natural level of equality with the other three major organs of democracy. But if it is necessary to continue the campaign for still another generation, these young correspondents will be the natural heirs to the burden that must then be carried.—EDGAR DAWSON.

Benjamin F. Shambaugh. As a young man of twenty-four, Benjamin F. Shambaugh stood before his first class in political science at the State University of Iowa. It was in the spring of 1895. Two years later, he was made head of the newly created department of government and administration, later termed the department of political science. For more than forty-three years he retained that position with distinction both to himself and to his institution and his profession, until his death on April 7, 1940.

Professor Shambaugh lived through eventful and exciting years, and he entered into them with zest, enthusiasm, and vision. As one of the original members of the American Political Science Association, he played an active part in that organization, serving as its president in 1930. Together with W. W. Willoughby and Albert Bushnell Hart, he founded the *American Political Science Review*, serving on its editorial board during the eight-year period 1906–14.

The years were broad in scope and interests were running wide and deep in these United States. Professor Shambaugh lived these years in scholarly endeavor and worldly insight. He was one of the founders of the Mississippi Valley Historical Association, which honored him by electing him to its presidency in 1910. After editing the Association's *Proceedings* for seven years (1907–14), he played an active rôle in establishing the *Mississippi Valley Historical Review;* and this he edited during

two terms (1914–16 and 1927–30). Active as a member of the American Historical Association, he retained his membership in that organization throughout his life.

Born in Elvira, Iowa, of Pennsylvania German parents, Professor Shambaugh received his Ph.B. and M.A. degrees at the State University of Iowa. His Ph.D. degree was granted by the University of Pennsylvania, after study at the Universities of Halle, Leipzig, and Berlin. Returning to Iowa, Dr. Shambaugh devoted his efforts and life to the enrichment of his native state. As Superintendent and Editor of the State Historical Society—a position which he occupied from 1907 to his death—he was directly responsible for writing and editing over 75,000 printed pages. His dynamic vision has left its imprint deep in the life of the historical research of the Middle West.

These research and administrative duties did not dull enthusiasm for teaching, and legion are the students who have been inspired by new horizons and unseen futures. More than seventy doctorates have been granted in the field of political science during Dr. Shambaugh's direction of the department of political science. The State University of Iowa, the Commonwealth of Iowa, and the American Political Science Association are the richer for his visions and enthusiasms and the poorer for his passing.—ETHAN P. ALLEN.

Political Science in American Colleges and Universities, 1636–1900. By Anna Haddow. Edited with an Introduction and Concluding Chapter by William Anderson. (New York: D. Appleton-Century Company. 1939. Pp. xiv, 266. $2.50.)

Many are the illusions and deep is the ignorance of most contemporary students of political science regarding the academic history of their chosen specialty. In a vague and perhaps uncertain way, they are aware of the fact that at one time political science was associated with "political economy." But their knowledge of the slow development of the discipline known as political science is indeed skimpy. In her book, Miss Anna Haddow presents the development of the subject-field of political science from its rudimentary beginnings in courses on "Ethickes" and "Politicks" down to the turn of the present century. Professor William Anderson, whose introduction and concluding chapter complete the volume, deserves thanks for his enthusiasm in bringing this doctoral dissertation to the attention of his fellow-workers in the study of government.

Through the pages stalk the giants of political science in the American academic field, and throughout the story are to be found the ever-recurrent problems of the present day. Academic freedom seems to have been dealt with adequately in the early courses, as is witnessed by the instructive story of Madison's remarks on the necessity of securing an "orthodox professor" and in the resolutions of the governing board of the University of Virginia in 1825. The search for a safe professor and the instructions of the board to the administration of the University would turn the hair of present-day administrators white from worry, as, indeed, do similar instructions at the present time. Many other examples of the contemporaneousness of the problems found in this history of political science could be cited. Indeed, one of the main themes to be extracted from this factual account is the antiquity of our modern problems of administration, subject-matter, course offerings, and other bothersome problems of administration, research, and teaching. Miss Haddow is to be congratulated upon making the dusty pages alive and vital without sacrificing scholarly accuracy.

To the present reviewer, two portions of the volume seem to deserve particular mention: (1) "Curriculum Offerings in Political Science, 1825–1865"; and (2) "The Emergence of Political Science as a Separate Discipline, 1865–1900." In the first of these, the author has presented, section by section and school by school, the problems met and solved in offering the subject-matter which finally emerged as the separate discipline of political science. It is in this section that many of the great names of those known as American scholars in the fields of political history,

political theory, and jurisprudence appear. And they appear in relation to their subject-matter as well as in their proper historic perspective. The account of the development of political science as a separate discipline is equally well told. Some students may find it more instructive than the survey of curriculum offerings, because it is distinctly more modern in tone.

Professor Anderson's remarks in the Introduction may well be quoted as a valid evaluation of the importance of this publication: "The student of political science in the United States who knows nothing about the rise of law and economics and political science out of the common matrix of moral philosophy, and who does not see the importance for political science of its long struggle to put 'is' in place of 'ought to be,' is greatly handicapped indeed." Miss Haddow has removed the necessity for this handicap.

The bibliography is of value, since it lists over 350 titles dealing with the historical development of the science of politics in the American academic scene.

ETHAN P. ALLEN.

State University of Iowa.

The Course of American Democratic Thought. BY RALPH H. GABRIEL. (New York: The Ronald Press Company. 1940. Pp. xi, 452. $4.00.)

Professor Gabriel's book is extremely well written, is in general liberal in its viewpoint, and is full of brilliant insights. Moreover, certain of the chapters are fine interpretations of movements and of individuals. The whole work has a certain movement and constitutes an effective analysis of the continuance of a tradition of thought, modified but not destroyed by changing climates of opinion and by the impact of changing concepts of man and his universe on the one hand, and by changes in the size, speed, and economic foundations of the American scene on the other. Moreover, Professor Gabriel brings to his task a variety of gifts. Apart from his training as an historian, he has considerable knowledge of anthropology and sociology, has digested some of the modern work in social psychology, has sufficient command of economics and law for the purpose at hand, and possesses, finally, both more understanding of religion and more sympathy with philosophy than is sometimes to be discovered in historians of cultural materials. Nevertheless, the completed work is rather a piece of brilliant impressionism than a well rounded presentation of its title theme, with the consequence that the author's merits of variety of training at times themselves become de[illegible]cts.

However, the division of the book into some six parts, delimited on a roughly chronological basis in terms of major changes in the American scene which appear to the author to have been of basic significance for

what he calls the democratic faith, helps somewhat to offset potential confusion of the reader. The first of these parts is concerned with the democratic faith in the Middle Period, set against the backgrounds of individualism and Christianity, and with a still young nationalism as the emergent force. This is on the whole the most adequate section of the book, although even here the *mélange* of historical backgrounds, theoretical analysis of concepts of political thought, discussions of the contributions of specific thinkers, description in anthropological terms, and excessive emphasis on interpretation by symbolism, after the Thurman Arnold manner, deprives the treatment of unity. It contains, however, *inter alia* a very fine essay on the defiant and doubting faith of Melville which, while it appears here a little unconnected, is later used for the making of highly suggestive comparisons.

The second part discusses the impact of the great sectional struggle, of the Civil War, and of its aftermath, on democratic belief, revealing how both sides in that struggle were concerned with elements in the democratic creed, but how compulsive nationalism triumphed, at least temporarily, over the doctrine of minority freedom and group rights. It may incidentally be noted that the section opens with a brief discussion of John C. Calhoun which newly illumines the possible democratic implications of his theory of concurrent majority. Gabriel nevertheless goes rather far in his insistence that Calhoun was indeed in the general movement of ideas that constituted the democratic faith, reading into him perhaps the uses to which he might be put by later generations who could perceive the significance of his pluralism, rather than justly interpreting his own intention.

The third section deals with the impact on the democratic faith of Darwinism on the one hand and of industrialism on the other. It is particularly interesting as indicating what happened to the religious element in the democratic faith under the impact of science and of social injustice. It also reveals the beginning of the problem, which was to become in our own age so acute, of reconciling democratic ideas with theory and practice of the social welfare state.

The fourth section consists of a study of various thinkers of the late nineteenth and early twentieth centuries who stressed different aspects of the democratic ideal. It makes manifest the intellectual confusion and the conflict of aspirations that beset the interpretation thereof in a society in transition. Through the treatment of opposites, it shows rather neatly, even though it over-simplifies, the extraordinary diversity of social and philosophical viewpoints which can stem from, and be held to be consonant with, the democratic credo. The brilliant chapter on Josiah Royce, a thinker too greatly neglected by political and social theorists, is however of great value for itself, apart from its place in the pattern.

The fifth section, concerned nominally with the progressive movement, covers also the growth of a new nationalism and the sense of manifest destiny up to and including American participation in the World War. It is revealing as to the varieties of ideas and aspirations which make America's coming of age a period of *Sturm und Drang*, and makes clear that the process was not one of integration. In its treatment of Progressivism proper, however, it is singularly inadequate. It reveals neither the *élan vital* of the movement nor the greatness of its leading, and pioneering, figures.

The last section deals with the equipment and the revised symbolism with which American democracy, in a continent state, with the necessity of increased government functions, faces the dangers arising from economic insecurity on the one hand and from the threat of alternative régimes based on force on the other. It is particularly interesting, despite its sketchiness, not only because it underlines the implications of the obvious conflict between the concept of a strong nation and the ideal and practice of individual liberty, but also because it brilliantly notes the essential difficulty of a period when science, through its doctrine of determinism, has come potentially into conflict with a normative sociology and with the whole theory of free will, one of the ancient bases of democratic endeavor.

The essential value of this work rests on three things. First of all, it is a fine sketch of the effective pouring of the old and long-lived democratic wine into new bottles, changing in dimension and composition as geography, economics, and science brought new situations. It is, secondly, a brilliant indication of what may be done by bringing to the interpretation of established beliefs and traditions a wide equipment from a number of disciplines, and by a profound recognition of the impact on political and social patterns of varied human activities and interests, and of the changes therein. It is, thirdly, and by no means least importantly, of extraordinary value by reason of scattered insights into quite basic themes historical and contemporary, and by its revelation through them of the real nature of the issues confronting us, of the historical forces which lead to hope for a continuance of the ways of moderation, and of the continuous shocks that attack those ways and require adaptation and resiliency if the search to preserve a mean between liberty and authority is not to be frustrated. Especially one notes, as an undercurrent to this theme, not perhaps consciously developed by the author, the concept that the homogeneity of the democratic philosophy has at each new blow had graver difficulty in reconciling its always potentially divergent elements.

From this last, however, there emerge certain problems which Professor Gabriel does not solve, and for whose solution he provides us with very little clue. How are we to get the necessary education, the necessary

growth of reason, the necessary control of the vast force of unreason, the necessary statesmanship and leadership, and the necessary reconciliation of science, including modern psychology, with the ethical basis of the democratic way, without which the new undertaking which is America will find itself submerged in the new ideas of an old Europe—ideas leading back into the past, and even into the distant past of forest and jungle? To have raised the problem and to have made us aware of the factors involved is no small service. And it may be unfair to demand an answer. Nevertheless, Professor Gabriel might have got nearer an answer had he considered more thoroughly the relation of democratic aspirations and democratic myth to the realistic workings of democracy and to the changing institutions of government. He stresses, it is true, the usually uninspiring character of realistic politics, and he shows on occasion how men were driven to revolt against the corruption thereof. Perhaps he is not sufficiently aware of the beneficent work of politicians and of the function that they have performed, and do perform, as brokers between interests, as true moderators who help to insure that democratic society will not diverge too profoundly from the Aristotelian mean. Whether these hitherto beneficent techniques can be adapted to the solution of class conflict on the one hand and the needs of modern administration on the other is, of course, in itself a major question.

Yet, whatever its limitations, this is the most perceptive and the best written recent work of its kind. Different in manner from the late Professor Parrington's regrettably unfinished work, and differing also in the statement, but not in the temper, of philosophic outlook by reason of the impact of changing forces in these recent hurried, harried years, it effectively supplements and complements those magistral tomes, and is worthy of their company.

THOMAS I. COOK.

University of Washington.

I Confess: The Truth about American Communism. BY BENJAMIN GITLOW. (New York: E. P. Dutton and Company. 1939. Pp. viii, 611. $3.75.)

Has the Communist party of the United States changed front since August 22, 1939? Perish the thought. It was the wicked Franklin D. Roosevelt who reversed himself, shifting from New Dealism to domestic reaction, from peace to imperialistic alliance with Britain and France. In spite of this great betrayal, the Communist party of the United States marched straight ahead. Nor was it in the slightest degree deflected from its rectilinear course by Joseph Stalin. Such, at least, is the official version of the party's policy in this country since Nazi Germany and Communist Russia entered into close partnership.

In *I Confess*, a dissenting opinion that runs to over six hundred pages

is presented by Mr. Gitlow. More than that, he goes back to the origin of the American Communist party in 1919, showing in detail its complete dependence upon Moscow since that date. A quip current even among loyal members runs as follows: "Why is the Communist party of the United States like the Brooklyn Bridge?" And the answer: "Because it is suspended on cables," i.e., cable messages to Moscow asking for decisions on all more important American issues, particularly on the innumerable factional or personal splits and "splitlets" that have afflicted the party throughout its short but troubled history. The author sums up as follows: "The American Communist party is in the same relation to the Soviet government as the paid agents of Nazi Germany in the United States are to the government of the Third Reich."

Regardless of official pronouncements by Earl Browder and by Clarence Hathaway, editor of the *Daily Worker*, it is safe to say that Mr. Gitlow's conclusion is now accepted in the United States by all except die-hard C. P. members. What the author of *I Confess* has done is to pile up a mountain of detailed evidence in support of this conclusion. Nor can there be any doubt as to his opportunities for observing everything that has been going on in the party. A charter member, so to speak, since its organization in 1919, its first "martyr" under the New York Criminal Syndicalist Law, candidate on its ticket for vice-president in 1924 and 1928, he was in a position, as Max Eastman points out in his Introduction, to see everything from "the inside—and what is more important, from the top."

In 1929, because of his stanch adherence to its American interests, Mr. Gitlow was expelled from the party by ukase of none other than Joseph Stalin himself. Since that date he has followed the course of American communism perforce from the outside, but none the less closely on that account. Animus there doubtless is in much of what he has written. He would have to be more than human—and less than communist—to refrain from settling certain personal grudges in this "confession." Readers interested in politics alone could do without his revelations regarding the amatory peccadilloes of various comrades, male and female, although to the unregenerate these Rabelaisian episodes may add a certain piquancy. Checked by the record of major external events, however, *I Confess* rings true throughout. As a sourcebook on the history of the Communist party in the United States, it is invaluable. Reduced in bulk and sold at a popular price, it should enjoy wide distribution. Certainly nothing could do more damage to the growth of communism in the United States. In particular, the book might well be made "required reading" for all student members of the A. S. U.

ROBERT C. BROOKS.

Swarthmore College.

Symposium on the Totalitarian State; From the Standpoints of History, Political Science, Economics, and Sociology. By Fritz Morstein Marx and Others. (Philadelphia: The American Philosophical Society. 1940. Pp. 102. $0.75.)

This arresting volume consists of a series of seven papers published as the *Proceedings* of the American Philosophical Society for 1939. The symposium is of vital interest to students of any of the social sciences.

In "Totalitarian Politics," Fritz Morstein Marx carefully examines the basic phenomenon posed by totalitarianism. He concludes that (1) totalitarianism is determined to secure the universality of its absolutes and this, being a sacred mission, permits of no distinction between persuasion and brutal force; (2) totalitarianism is essentially anti-intellectual, its leadership principle admits of no rational basis, and its sole foundation is faith; (3) the dynamic character of totalitarianism emphasizes and magnifies the tragic insecurities of "mass man"; (4) if the system endures, its corporate features "may well change the physical plant of the nation-state to such an extent as to set a new international standard."

In "Principles of Totalitarian Education," Thomas Woody finds the five common principles of totalitarian education to be aristocracy, anti-pluralism, anti-rationalism, collectivism, and activism. These principles "constitute the basic educational framework of societies that look for stability and perpetuity on the basis of strict regimentation of the individual's capacities, rather than through their free development; they rest on a conviction, well or ill-founded as may be, that the experiment of liberalism, whether in its economic, political, or educational consequences, failed to show that men, if they had freedom, would use it for the common good."

Hans Kohn warns against analogies drawn from the wars of the nineteenth century or from the first World War in interpreting the current conflict. His paper on "The Totalitarian Philosophy of War" indicates that totalitarian imperialism has altered the concept of war. The liberal state considers war a "hateful necessity at some given moment," and "even monstrous." Such states seek to eliminate war. "In the totalitarian philosophy, war is the normal and welcome concomitant of all life, the supreme manifestation of vitality and virtue, an unalterable and dominating part of the whole system. Ultimately these two different, and even opposite, concepts of war rest upon two different concepts of the nature and destiny of man."

C. R. Whittlesey, in "The Relation of Totalitarianism to International Trade and Finance," maintains that the essence of totalitarian methods in foreign trade is the substitution of authority for free individual choice in determination of what is traded. Free choice is presumed to be based on price; authority, on other considerations. This disregard of cost on the

part of totalitarian economic policies gives rise to vital problems for competing countries.

In "The Economics of the Totalitarian States," Moritz J. Bonn claims that both German and Italian totalitarianism arose through the active support of influential business men who expected protection from the new order. The system resulted, however, in a hierarchical collectivist society wherein the principles of army collectivism were transferred to the civil life of the entire nation. "It is not a form of state capitalism—for the state has not taken over the capital; it leaves it in the hands of its owners, whilst it is reducing and destroying its value, and it may finally wipe it out in part or totally by a levy on property. . . . Capitalism has not been destroyed by confiscation, it is being hollowed out by requisition and regimentation."

In "Discussion of Totalitarianism," Herbert Heaton pleads for a greater understanding of totalitarian countries by the Western nations which, with their greater resources and deep-rooted individualist traditions, have been forced to move far toward totalitarianism.

In "The Novelty of Totalitarianism in the History of Western Civilization," Carlton J. H. Hayes presents these seven specific novelties of dictatorial totalitarianism: (1) It is really totalitarian in that it monopolizes all powers and directs all activities of individuals and groups. (2) It commands and rests upon mass-support. (3) It is maintained, and its overthrow made very difficult, by novel and effective agencies of popular education and propaganda. (4) It has almost irresistible allure because it has been infused with an emotional and religious spirit. (5) It has its own pattern of methods and techniques. (6) It exalts might and force, not only as a means to an end, but as an end in itself. (7) It is a reaction and revolt against the entire historic civilization of the West.

CATHERYN SECKLER-HUDSON.

The American University.

Modern Dictatorship. By DIANA SPEARMAN. (New York: Columbia University Press. 1939. Pp. 272. $2.75.)

Fascist Italy. By WILLIAM EBENSTEIN. (New York: American Book Company. 1939. Pp. x, 310. $2.50.)

Miss Spearman's work is an ambitious attempt to cover, in a single volume, the contemporary manifestations of European authoritarian, or autocratic, government. Classifying the dictatorships of the present as either (1) Totalitarian, (2) Catholic, or (3) Political—an unusual taxonomic approach!—the author initially gives a spotty and patchy account of their origins, encasing each in broad generalizations, and buttressing them all with fragmentary and rather non-current data. One merit of the

treatment lies in its inclusiveness, since few writers have endeavored to reproduce for the Western world the political climate of Portugal, Turkey, or Poland. The principal drawbacks arise from an over-simplification of complex situations, and the consequent ascribing of situations which fail to fit the simplified *cadres* to purely "accidental" causes (pp. 43, 49, 59). References to authorities are most casual and citations distinctly inadequate.

In dealing with "The Psychological Background," the author is rather more felicitous, being less concerned with forms than with substance, and with "legends" and "myths" than with factual data. Though palpably tinged with Freudianism, the hero worship—deification-of-the-dictator—cult receives a distinctive handling. Chapter III, dealing with "The Psychological Background and the Theory of Autocracy in European Political Thought," is a carefully balanced, integral piece of pure political theory, set in a new psychoanalytic context; while the inquiry into "Authoritarian Tendencies in Democracy" applies the same technique to the literature and theoretical expositions critical of democracy. Little that is new is given in the chapter on "Problems of Autocratic Government" save to affirm that "modern dictatorship does seem to be a successful form of autocracy in the sense that it has solved the immediate problems of autocracy" (p. 223); while the conclusion is reached regarding "Dictatorial Economics" that "although the Fascist governments have undoubtedly made their subjects poorer than they otherwise would be, it has never been their intention to make them richer" (p. 245). Miss Spearman concludes that "Democracy cannot compete with the dictators on their own ground . . . Democracy can only offer the responsibility of choosing for one's self" (p. 265).

All told, the volume appears to this reviewer distinctly too abstruse and unrealistic, influenced by the too rigid application of analysis *in vacuo*, and altogether devoid of the sense of the long-range significance of the phenomenon of autocracy.

Far different in conception and execution is the volume by Professor Ebenstein. With swift, deft strokes, he sketches the essentials of the pre-war Italian political scene and then depicts, with the excellent perspective of nearly two decades to aid him, the actual exfoliation of Fascism, not only as a political movement, but as a system of society with manifold ramifications into every part of individual and collective life. With a keen sense of realities, he deals with the particular points (as the press, education, nutrition, wages, population policy) at which Fascist conceptions sharply diverge from those of democratic states. If this accentuates differences, it is, however, distinctly wholesome, as the volume incrementally provides intellectual standards and factual criteria for evaluation and appraisal of the entire Fascist régime in both its domestic and its inter-

national aspects. *Inter alia*, Ebenstein brings into clear relief the tremendous hiatus between theory and practice in the corperative state (pp. 165–188). Inexorably, he finds, Fascism develops a permanent war economy of a capitalistic character; "yet, given the framework of military preparation, the Fascist economy still retains some, if not all, essential characteristics of an economy based on private initiative" (p. 161). This differentiates it, at least in degree if not ultimately in kind, from the economy of National Socialism. "It in no sense constitutes a synthesis of capitalism and socialism or a new type of economic constitution" (p. 163).

While anticipating war as the outcome alike to credal affirmations and of internal necessities of Fascism, the author, writing in mid-1939, does not appear to have envisaged any impending affinity of the Nazi and Soviet régimes as a factor in the international scene. In this, of course, he was in excellent company. His scepticism as to the utility to Rome of the Axis is doubtless also widely shared. Whether governing circles in Rome have so objective a view of the present international scene, and of the part of the Axis in it, is seriously open to question.

It is rather difficult for the reviewer to be restrained in his appraisal of Professor Ebenstein's work. Its lucidity, its quick, trenchant grappling with the fundamentals of the Italian situation, the consistency and continuity and clarity maintained throughout the volume, the ability calmly to appraise and analyze successively swiftly shifting situations—these are achievements of no mean character. There is a chaste economy of statement, a quest for primordial authority throughout, meticulous fidelity in the citation of sources, and conscious selectivity in the use of only the most authentic materials to establish essential facts in crucial situations. Finally, there is no lack of discernment of the ultimate social consequences of Fascism, which involve "the traditional values of Western civilization" as the high stakes of the struggle. These qualities are not likely to be quickly eroded by the high tides of present history.

MALBONE W. GRAHAM.

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Which Way Democracy? BY WILFRID PARSONS. (New York: The Macmillan Company. 1939. Pp. 295. $2.00.)

New Adventures in Democracy. BY ORDWAY TEAD. (New York: McGraw Hill Book Company. 1939. Pp. 229. $2.00.)

The Impasse of Democracy. BY ERNEST S. GRIFFITH. (New York: Harrison-Hilton Books, Inc. 1939. Pp. 380. $3.00.)

These books are contributions to the large amount of literature now appearing which seeks to give interpretation to the democratic dogma.

Doubtless much of this literature is helpful in understanding the meaning of democracy and what is required of men to make the democratic process effective. But most of the books bear the marks of indecent haste and a desire to impress upon the reader a point of view with regard to a subject which can be comprehended, if at all, only by patient study from many diverse angles. In all this writing there is no lack of words, and it often happens that what might have been a good article has been inflated to the dimensions of a superficial book.

Father Parsons' *Which Way Democracy?* is undoubtedly the most thoughtful of the three books under review. The book is divided into four parts. In the first, an attempt has been made to diagnose the ills of the modern world. This is followed by a series of chapters in which the principles that must animate democracy are studied in the Catholic religious tradition. The third part applies these principles to the problems of the United States. In the last chapter an attempt is made to summarize and synthesize the whole problem of the modern world and its solution.

For Father Parsons, the ultimate problem of the state is a religious one. The anarchistic answers of Rousseau and of Karl Marx are therefore rigidly excluded from consideration. Much time is spent in clearing the ground of notions which run counter to the teachings of the Catholic Church, but there is no demand that the whole religious position upon which Catholics stand shall be accepted. What Father Parsons asserts is "that the essential belief in man's dignity as a creature of God, with a supernatural last end of eternal felicity, is the minimum on which social peace and prosperity can be founded." He holds as an article of faith "that only in our democratic form of government do we find in modern conditions the full flowering of justice among men; and that only from religion, as from a source, has this democracy ever drawn its strength and meaning."

If the justification of democracy by faith is the theme of Father Parsons' book, it is by its works that Mr. Tead would justify the democratic process. *New Adventures in Democracy* finds the core of its thought in the discussion of ways and means of making democracy more effective in the fields of industry, education, and the public service. Essentially practical questions are posed and serious efforts are bestowed upon the answers. What Mr. Tead believes was stated almost three hundred years ago by William Penn, when he wrote that "governments, like clocks, go from the motion men give them." He is therefore largely concerned with the improvement of personnel.

The great aim in the improvement of personnel is to provide the leadership which is essential to democracy. Most discussions of democracy come eventually to the conclusion that how well a democracy works depends upon how ably it is led. Better personnel does not depend wholly upon improved technical training. That is to say, technical efficiency can run

at opposite poles to the purposes and methods of democracy. It is only when people can be aroused to take an enlarged view of their jobs that results are obtained which promote democracy. As Mr. Tead points out, the one characteristic of all acknowledged leadership "is virtually selfless devotion to a cause far larger than the individual self and his enhancement." But the leadership which is necessary to the fulfilment of democracy "is a plural fact—many occasions, many organizations, hierarchies of directive individuals within organizations—all requiring some degree of leadership." Modern democratic faith insists that man shall attain personal stature through communal relations and creative contributions.

The achievement of democracy along the lines envisaged by Mr. Tead is commonly thought to result from education. But a system of education designed to increase the acquisitive capacity of the individual cannot provide the ethical discipline necessary in a people who are to undertake the task of self-government. The education which is required is a training for wisdom and character. It must teach the conquest of self which is the first requisite of leadership. If the education of today cannot somehow inculcate the principle of control, the failure of democracy from want of leadership is only a matter of time.

While it cannot be said that Mr. Tead brings his discussion to full conclusions, it can be affirmed that he is on the right track. There are many points raised which will bear further discussion and elaboration. No solution of the problem of democracy can be reached through the reiteration of conclusive and mouth-filling phrases. As Mr. Tead points out, "unless and until a great number of conscientious citizens in various walks of life focus their attention upon the task of making their own organized relations to social groups democratic, they will not become democratic in intention or in operation." It may therefore be hoped that this book will encourage some citizens to undertake this form of self-analysis.

The Impasse of Democracy, by Dean Griffiths, undertakes to look beneath the competing political ideologies of today to find certain fundamental trends which are universal. An attempt is then made to find through a scheme of national planning a mechanism which will help to solve current problems within the democratic process.

Democracy is undoubtedly in need of defenders in these days of recurring crises in world affairs, but one could hope that before taking pen in hand writers would ponder more deeply the lessons of history. Some people will hold democracy as a faith; others will consider it as a way of life to be improved by citizens taking thought of the part they must play in a complicated process. Few will be interested to see democracy set forth in terms of political devices.

WILLIAM S. CARPENTER.

Princeton University.

Government and the Governed; A History of Political Ideas and Political Practice. By R. H. S. Crossman. (New York: G. P. Putnam's Sons. 1940. Pp. x, 306. $3.00.)

Political Theory. By R. Kranenburg. Translated by R. Borregaard (New York: Oxford University Press. 1939, Pp. 268. $3.00.)

Government and the Governed is a rapid survey of the political theories of modern times, with a realistic eye constantly directed to the social and political conditions which produced them and to their importance as a background to, and as an aid in solving, the political problems of the present-day world. The interest of the academic antiquarian is entirely absent; "to study the history of political ideas is to study our own ideas and see how we came to hold them" (p. 5). The writer is keenly aware of the impact of contemporary political conditions and the resulting currents of political ideas upon inherited conceptions of the state and government and of the need to re-evaluate the teachings of political philosophy in the light of the present.

The central theme is the nation-state and the course of its employment, from the time of Machiavelli to the present, as "the bottle into which the new wines of capitalism, nationalism, democracy, and so on have been poured" (p. 11). The treatment is chronological, starting with a chapter on "The Beginnings of the Modern State." Four further chapters are devoted to the English, American, French, and Industrial revolutions; the remaining three cover "National Liberalism and Imperialism," "Socialism and Russian Revolution," and "The Fascist Revolutions." As the late H. A. L. Fisher writes in the Foreword, "Mr. Crossman travels easily over a wide tract of time. If some of his judgments may seem to need qualification, he has a good eye for the general features of the landscape and a gift for describing contemporary movements of opinion and of disengaging those which are of special moment."

The style is fluent and non-academic. If impressionistic, the writer is not shallow; in fact, there is evidence of thorough and sound scholarship. He displays the faculty of brilliantly saying much in few words. The following examples will serve as illustrations. "We think of law," he writes, "as the result of a decision by a parliament or dictator; the Middle Ages felt it to be the framework within which prince and baron and serf alike must decide everything" (p. 15). "Rationalism had destroyed the medieval mystique and had made of God a theological abstraction. Rousseau gave to his age a new object of worship—human nature—and a new unecclesiastical Church, the people acting as a community" (p. 113). "You can put the clock back (for a time) but you cannot put it forward except in theory. . . . Russia has attempted to skip whole generations in the development of modern industry and political organization. . . . You can

produce tractors of a sort by a Five Year Plan, but you cannot produce an administrative class so easily" (p. 53). The book, indeed, is replete with such epitomized statements which do not sacrifice accuracy to brevity. *Government and the Governed* will hold the attention of the casual reader and it will afford him much profit; and it cannot fail to delight the student of political ideas, however much he may disagree with many of the author's generalizations.

R. Kranenburg's *Political Theory*, on the other hand, is more academic in its approach. It follows a topical plan, dealing with the general nature of political theory, with theories of the formation, object, and forms of states and governments, and with the relation between state and law, composite states, state and nation, and state and church. Frequent references are made to the writings of a wide range of political theorists, but the book is more than a résumé of political theory. It is also a restatement of the principles of political science—an up-to-date and largely objective reëxamination of many of its fundamental axioms and assumptions in the light of recent experience in the realm of practical government and politics in both the democratic and the new totalitarian régimes.

O. Douglas Weeks.

University of Texas.

Montesquieu and English Politics (1750–1800). By F. T. H. Fletcher. (London: Edward Arnold and Company. 1939. Pp. 286. $4.50.)

As Kunst has demonstrated the influence of Montesquieu on the constitution of the United States and Carcassonne on that of France, so does Mr. Fletcher show the effect of the writings of the Anglophile *philosophe* on English political thought and politics during the last half of the eighteenth century. He shows in great detail, and with abundant quotations and references, the degree of that influence manifest in the writings of Adam Ferguson, James Beattie, George Wallace, William Falconer, Sir James Steuart, Adam Smith, Paley, De Lolme, William Blackstone, and Edmund Burke. Not only that, but Mr. Fletcher also assesses the effect of Montesquieu's teaching on political discussion, outside of Parliament and within, of such questions as corruption and reform, the American and French revolutions, and the government of India. In this connection it is interesting to note the large measure of Burke's indebtedness to Montesquieu for his ideas on imperial policy and the French revolution. Considering the influence of Blackstone on Anglo-American legal development, the extent to which he plagiarized Montesquieu in trifling with philosophic thought is important.

In his main task of appraising the effect of Montesquieu's writings on political discussion and controversy in England, Mr. Fletcher makes a genuine and illuminating contribution. He is, however, too uncritical

in the exposition of Montesquieu's thought and method. It may be argued that such critical attitude is not required by the nature of Mr. Fletcher's task. Nevertheless, in view of the fact that in his apologies for and eulogies of Montesquieu he exerts himself in "uncommon strains of eloquence," this reviewer feels justified in taking issue with Mr. Fletcher on several points—points about which differences of interpretation are not purely a matter of preference.

First, Mr. Fletcher fails to stress the incompatibility of Montesquieu's sociological relativism and his inherited general postulations to which he pays more than lip service. Second, Mr. Fletcher seems to be predisposed to an interpretation of the "spirit" which Montesquieu posits in law, which appears to be unduly mystical. Third, in discussing Montesquieu's "morphology" of English politics, Mr. Fletcher fails to point out that the relation between the executive and the legislature did not correspond to Montesquieu's description of it. This is true even though the position of the ministry was still uncertain. Mr. Fletcher does admit that subsequent developments upset the ideal balance which Montesquieu had seen in the British constitutional system.

The first imperfection pointed out above, and possibly the second one as well, probably springs from the fact that Mr. Fletcher is not primarily a student of philosophy, but a professor of French. This probably accounts also for his classification of the empiricist Hume as an idealistic philosopher.

HENRY JANZEN.

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Public Policy. EDITED BY C. J. FRIEDRICH AND EDWARD S. MASON. (Cambridge: The Harvard University Press. 1940. Pp. xiii, 391. $3.50.)

Public Policy is the first issue of what may become an annual publication, or yearbook, of the Graduate School of Public Administration of Harvard University. The major theme of this particular issue is industrial organization and control. The essays are the outgrowth of the seminar program of the school and reflect the approach of the lawyer, the economist, the political scientist, and the administrator toward a variety of important public problems. The essays are not ready-made solutions to public problems, but rather attempts at clarification and analysis from distinctive points of view. The editors quote a friendly critic of the manuscripts who said: "The proposed volume should not be addressed to scholars as an explanation of the perversity or stupidity of politicians, but to citizens, civil servants, and political leaders as an account of what light scholarship may throw on what is being done and what can be done."

One cannot expect to interpret and evaluate all the essays in a short review. "Public Policy and the Nature of Administrative Responsibility,"

by Carl J. Friedrich, co-editor of the volume, makes an excellent introductory presentation of the first volume and its successors. Dr. Friedrich examines policy-making and execution as a continuous process and inseparable in operation. "Public policy is being formed as it is being executed, and it is likewise being executed as it is being formed." His emphasis is placed on the long-time evolution of public policies by administrative officials rather than their enactment by a legislative body or the stroke of a dictatorial pen. The public administrator must be made responsible for his acts. Fortunately, most of them are responsive to the technical knowledge necessary to administer their office and to public sentiment. "Right policies," the author concludes, "are policies which seem right to the community at large and at the same time do not violate 'objective' scientific standards."

"Price Policies and Full Employment," by the co-editor, Edward S. Mason, seems a long step from policy administration. This essay delves into, among other phases, the problems of the T. N. E. C., the public concern with business price policies, the lack of standards of undesirable price behavior, and relations of prices to employment and output. "Industrial Markets and Public Policy: Some Major Problems," by Donald H. Wallace, is the longest essay in the series, and in many respects the best presentation. Wallace undertakes a review and examination of the proposals of several leading economists on business organization and methods and the position which the government should take in reviving or controlling industry. A. H. Feller, of the office of the Attorney-General, contributes a study on "The Public Policy of Industrial Control." Here we find an examination of competition, regulation, bargaining power, cartelization, and government competition and ownership of industry. "The Pricing of Bituminous Coal: Some International Comparisons," by John P. Muller, is an essay on the prices and markets of bituminous coal in the United States, England, and Germany. George Jászi contributes a study on "The Budgetary Experience of Great Britain in the Great Depression," and after exposing the fallacies of the budgetary procedure, concludes that we cannot contrast America and Britain and certainly should not imitate the British budgetary policy. "The Significance of the Government Trust Funds for Monetary Policy," by G. G. Griffith Johnson, Jr., of the federal Department of Commerce, is an excellent presentation of the influence which large trust funds held by the Treasury have upon the formulation of the annual budget, the debt policy, and government bond markets. Robert Frase, of the federal Department of Labor, writes "A Study of Labor Market Control," with special emphasis on Germany and England. The technical assistant to the Committee on the Improvement of Government Personnel, Lewis B. Sims, presents an excellent discussion of "Social Scientists in the

Federal Service." Mr. Sims is slightly outside the real theme of the volume, but has issued a much needed warning to the colleges, students, and especially the civil service commissions of the country who are interested in trained personnel for government service. "Some Reflections on the Nature of the Regulatory Process," by Merle Fainsod, is a further study of the regulatory commissions and the rapid growth of administrative discretion. The concluding paper is a scholarly historical examination of "The Problem of Constitutional Dictatorship," by Frederick M. Watkins.

Space unfortunately forbids a more detailed and critical examination of these provocative essays. It is to be hoped that this valuable introductory experimental volume from the Harvard Graduate School of Public Administration is but a forerunner of good things to come annually from the pens of its faculty and fellows.

EDWIN A. COTTRELL.

Stanford University.

Handbook of American Constitutional Law. BY HENRY ROTTSCHAEFER. (St. Paul: The West Publishing Co. 1939. Pp. xxxv, 982. $5.00.)

Some three thousand instances of judicial construction of federal constitutional provisions gave birth to the doctrines and principles enumerated in this comprehensive, orderly, wearisome compilation. One of the Hornbook Series, designed to serve as a textbook in constitutional law, the study is developed in accordance with the thesis that constitutional law is "a body of judge-made law assuming the legal form of a series of judicial interpretations of the several written constitutions that compose our constitutional system" (p. 1). The author's objective is to present "a systematic statement of the formal legal principles, doctrines, and theories which the courts have employed, and still employ, in the process of giving constitutional provisions concrete applications" (p. 3), trusting that, with such a statement at hand, the student will be more likely to recognize the contribution of "non-legal factors" to the development of constitutional law, even though, in the author's opinion, "complete understanding" of such "non-legal factors" is quite impossible.

Upon the basis of decisions in selected cases, Professor Rottschaefer has formulated 340 propositions, such as: "The legislature has no power to exercise judicial functions" (p. 49), or "A state tax that operates to discriminate against interstate or foreign commerce is prohibited by the commerce clause" (p. 356). One or more such propositions serve as topical sentences for the several sections of the study. Each proposition is developed by a summary recitation, with a minimum of factual background, of principles enunciated with respect to it by federal or state judges, in a manner and style reminiscent of Thomas M. Cooley's *Constitutional*

Limitations. Judicial pronouncements are treated by the author without speculative inquiry or critical analysis more searching than that to which a brigadier-general's orders are subjected by a corporal of the guard. A typical passage follows: "The Supreme Court has settled several important questions concerning [proposal of constitutional amendments by Congress]. The joint resolution proposing an amendment need not expressly state that it is deemed necessary by two-thirds of both houses, since its submission sufficiently indicates that fact [case cited]. The two-thirds vote of each house required for its submission means a two-thirds vote of those present, assuming that a quorum is present, and not a two-thirds vote of the entire membership of each house [case cited]. Any irregularity or insufficiency in the action of Congress in proposing an amendment cannot be attacked in the courts on that ground in advance of its adoption (as, for instance, by an action to enjoin the governor of a state from submitting it to the state legislature), but only after its promulgation and when it is sought to put it into effect [case cited]" (p. 388).

The book is perhaps a splendid outline with which to begin a study of judicial interpretation of constitutional provisions, but it seems doubtful whether students will find the volume helpful toward acquiring understanding either of the judicial process or of constitutional practice. The volume's utility as a source-book is enhanced by inclusion of the text of the Constitution, an extensive table of cases cited, numerous footnotes, a bibliography composed exclusively of law review articles, and an excellent forty-page index.

ALDEN L. POWELL.

Louisiana State University.

American Local Government. By ROGER H. WELLS. (New York: McGraw-Hill Book Company. 1939. Pp. xii, 200. $1.50.)

A fair appraisal of this book is not easy. Appearing in a textbook series and announced by the publisher as "a concise yet complete treatment of American local government," the book shows few of the features which have characterized earlier texts in the field. The book appears rather to present a study in intergovernmental relationships, with a secondary and somewhat distracting emphasis upon local government *per se.*

Appraised from the point of view of its major thesis, the study, although brief, is both timely and useful. The presentation is scholarly, but neither dull nor heavy. Professor Wells analyzes traditional institutions in the light of shifting economic and social conditions and demonstrates the ineffectiveness of existing areas and structures as agencies of government in an industrialized America. Upon the basis of this analysis, the author emphasizes the need for drastic reconstruction of local institutions and the necessity for a redistribution of functions and responsibilities. Using the

local units as a point of departure, he presents in order the position and responsibilities of the citizen (Chapter II, "The Citizen and Local Government"), of the state (Chapter IV, "The States and Local Government"), and of the United States (Chapter V, "The Rôle of the Federal Government"). Chapter I is a review of the economic and social forces which influence both the structure and policies of government. Chapter III is devoted to a discussion of areas and structure in the local field. Of the three chapters dealing directly with the problems of intergovernmental relationships, the section given to the rôle of the federal government is the best, in that the subject-matter is fresher and the author is less inhibited by reason of his departure from the traditional approach. Attention must be called also to the excellent discussions in the second chapter on "Citizen Groups," "Local Government and Labor," and "Aids to Citizenship."

Viewed as a textbook in the local field, the study is too comprehensive in scope for the brevity in treatment. Because of the nature of the subject-matter, wide variations in practice, and a persistent belief in the right of local self-government, broad generalizations and concise statements are unsatisfactory, if not actually dangerous. Professor Wells worked under too great a space handicap. To illustrate: the author devotes only twelve pages to a discussion of the city, including problems of area and structure, and disposes of the "ubiquitous county" in six pages. Proportional representation is treated on a single page. Further, the functions of government at the local level are neglected entirely except as problems in intergovernmental relationships. Balanced against this meager treatment of vital problems in the local sphere, twenty-five per cent of the total space is given to a discussion of the rôle of the federal government in promoting the general welfare. Slightly more space is given to the administration of relief, social security, and public works by the national government than is devoted to the city and county as units of government.

I call attention to these facts, not in criticism of the book, but in support of my contention that this is primarily a study in intergovernmental relationships, unfortunately burdened by too many specific references to local institutions and practices. The book will nevertheless fill the need for a short text in the local field, and will be particularly valuable for factual reference and as a supplementary text in a general course in American government. The book should appeal also to the lay reader who is seeking reliable information, concisely stated, in this field.

HAROLD M. DORR.

University of Michigan.

Filibustering in the Senate. By FRANKLIN L. BURDETTE. (Princeton, N. J.: Princeton University Press. 1940. Pp. ix, 252. $2.50.)

This is a comprehensive record of the practice in the Senate of "the fine art of obstruction from John Randolph to Huey Long—and after."

In fact, filibustering is said to have begun before the end of the first session of Congress in September, 1789, when a group of senators persisted in "talking away the time so that we could not get the [Permanent Residence] bill passed."

Mr. Burdette undertook a research that "presented endless facets and intricate details." The chronological development of obstruction is set forth in orderly fashion, and the historic filibusters are skillfully described, e.g., the struggle over the Force Bill, the repeal of the Silver Purchase Clause, and the bitter fight over the Aldrich-Vreeland Currency Bill during which La Follette held the floor for eighteen and a half hours, in spite of precedent-making rulings as to quorum calls and "intervening business."

President Wilson's excoriation of the "little group of wilful men" who prevented a three-fourths majority of the Senate from passing the Armed Ship Bill was promptly followed by the Senate's adoption of the clôture rule of 1917. By an excellent table (p. 223), Mr. Burdette demonstrates that this rule has by no means put an end to filibustering. From the date of its adoption down to 1940, only thirteen clôture petitions were filed; in only four of these instances has clôture actually been applied. Nevertheless, to the present reviewer it seems that Mr. Burdette's implication that this rule has "had but slight effectiveness" is hardly justified. At its first application (in the long-protracted debate over the ratification of the Treaty of Versailles), clôtured debate continued only on parts of four days. In none of the other three instances does the debate seem to have continued for more than ten hours. Furthermore, the mere filing of a clôture petition reveals clearly the number and "weight" of those seeking to restrict debate; in repeated instances this has led to a decision of the issue before restricted debate began, or to a prompt settlement after the clôture had been rejected.

To the vivid account of the most interesting filibuster of the post-clôture period (against the Dyer Anti-Lynching Bill), it might have been pertinent to note that the Republican whip, Curtis, raised points of order against the obstructionists' series of motions as dilatory, and against their speeches as irrelevant, and cited Speaker Reed's rulings that had curbed similar practices in the House (Nov. 27, 1922, *Cong. Rec.*, 388, 394, 395.) But, as Senator Curtis said to the present reviewer, "Vice-President Coolidge would take no such bold stand." The colloquy between Underwood and Curtis—former colleagues in the House when Reed made his precedents—is significant. A few years later, another House-trained majority leader, Robinson, put squarely on record his belief that the Senate would sustain rulings by the chair holding dilatory motions and irrelevant speech to be out of order.

Few filibusters are wholly lacking in humorous aspects. Mr. Burdette's pages teem with many paragraphs of racy reading: descriptions of

various techniques for holding the floor; samples of preposterous padding material for long-distance speeches; Huey Long's recipes for turnip greens and pot-likker; Tillman's threat of lengthy readings from Byron's poems, by which he extorted for South Carolina an appropriation of $47,000 on a claim officially appraised at 34 cents; Rush Holt's selections from *Aesop's Fables*. Maintaining a quorum during night sessions is the cause of many amusing scenes. But the author does not fail to stress the grim determination and the fortitude of many a filibusterer, and the fact that even by fantastic devices filibusterers have often defeated ill-considered legislation.

The book's final chapter, "The Dilemma," contains discriminating comment on the classification of filibusters, their motivation, the personnel of the opposing groups, and the various techniques employed. Some ten pages are devoted to a terse presentation of the principal arguments for and against further restriction upon freedom of debate in the Senate. An excellent index lists some three hundred names of those whose relations to filibusters have figured in the book.

Mr. Burdette's studies in the little cultivated field of Senate filibustering have produced a volume of intense present-day interest and of large permanent significance in the history of congressional law-making.

GEORGE H. HAYNES.

Worcester, Mass.

Municipal Administration. By JOHN M. PFIFFNER. (New York: The Ronald Press Company. 1940. Pp. xvi, 582. $4.00.)

Books in the field of public administration have treated the subject by a description of the structural arrangements, by a detailed presentation of the practice followed in the several administrative units, by a posing of problems facing administrators or to be solved, or by an attempt to synthesize the several approaches.

Using the latter approach, Professor Pfiffner has achieved a nice balance in this work, which "is designed primarily as a text and reference book for college courses in political science." The author warns administrators and technicians that "they will find reading fruitful only in those chapters containing subject-matter to which they themselves are laymen."

The author aims to achieve "teachability"—to hold the young layman's attention, yet to tell him more than "the impressive commonplaces about the intricacies of city operation." Those familiar with Professor Pfiffner's *Public Administration* are aware of the clear, easy style of his writing. In the present work, none of this style is lost, even though the final drafts of approximately half of the twenty-seven chapters were prepared by colleagues and assistants.

The choice of materials in the book is good, and extensive footnotes are included. Each chapter includes a selective reading list of books, monographs, and periodicals. There are forty-nine illustrations, and an adequate index.

In the physical make-up of the book, the author definitely attempted to limit the space devoted to what he pleases to call the "staff or housekeeping" functions. Only a third of the volume, roughly, is devoted to the subjects of the municipality as a management problem, principles of organization, the governing body, administrative research and management planning, revenues, expenditures, and personnel.

The remainder of the book treats the "line" activities, which are grouped on a functional basis. Included under the protective function are police organization, personnel, and functions; prosecution and the courts; prosecuting officials; traffic; fire and structural safety; and public health. Public welfare is dealt with in chapters on social service administration and institutional management. Physical planning includes a definition of planning, land use planning and control, housing, and municipal airports. The part on public works is divided into two chapters, the first on engineering and streets, the other on sanitation and water supply. Regulation operation, and management make up two chapters dealing with public utilities. A grouping of cultural activities embraces education, parks and recreation, and libraries, museums, and music.

While the present book pertains to a more limited field of administration than the previous work of the author cited above, the presentation of the subjects of administrative organization and finances appears to have a better thread of continuity, and is more definitive.

DONOVAN F. EMCH.

University of Toledo.

Introduction to the Study of the Law of the Constitution. BY A. V. DICEY. Ninth Edition, with Introduction and Appendix by E. C. S. WADE. (London: Macmillan and Company, Ltd. 1939. Pp. clvi, 681. $5.00.)

Constitutional Law; Being the Seventh Edition of Ridge's Constitutional Law of England. Revised and largely rewritten by A. BERRIEDALE KEITH. 1939. Pp. lxvi, 726. £ 1 5s.)

The quarter-century that elapsed between the dates of the eighth and ninth editions of Dicey's classic work weakened the foundations on which the book rested and considerably lessened the veneration in which it was held by students of English constitutional law and practice. It was not merely that definite and sizeable portions of the volume were rendered obsolete by developments such as the adoption of the Statute of Westminster. More fundamentally, the phenomenal growth of administrative

legislation and adjudication on the one hand and, on the other, a long succession of drastic curtailments of individual liberty, starting with the Defense of the Realm Acts of 1914–15 and advancing through the Emergency Powers Act of 1920, the Incitement to Disaffection Act of 1934, and the Public Order Act of 1936 to the Emergency Powers (Defense) Act of 1939, brought into serious question the actual validity of the author's historic and at one time freely accepted exposition of the constitution's basic principle of the "rule of law." Most vigorous among the critics has been W. Ivor Jennings, notably in his *The Law and the Constitution* (1933; new edition, 1938). But there have been others, e.g., Harold J. Laski, William A. Robson, and O. Hood Phillips; and to the group may be added E. C. S. Wade, to whom we owe the new Dicey ninth edition—although, after all strictures have been voiced, this authority is still pleased to pay generous tribute: "It is to Dicey that the politician as well as the lawyer turns whenever a threat to individual liberty is proposed. Largely to him is owed the insistence upon careful safeguards which make government regulation much more tolerable than it is in other states where the individual is subordinated to national ends" (p. clvi).

With the eighth edition (1915)—the last from his own hands—Dicey abandoned the policy of reworking his text and undertook to bring his discussion to date rather by means of a hundred-page Introduction, characterized, among other features, by the adoption of a considerably more tolerant attitude toward the hitherto maligned French *droit administratif*. In the new ninth edition, Mr. Wade not unnaturally shrinks from the sacrilege of tampering with the Dicey monolithic text, contenting himself, so far as the text is concerned, with occasional footnote citations of more recent judicial decisions and with a few brief bracketed comments. The Dicey text, however, is embedded in a mass of supplementary materials supplied by Mr. Wade, i.e., a Preface of ten pages, an illuminating Introduction of one hundred twenty-four pages, and an Appendix of more than one hundred eighty pages—altogether, nearly three quarters as much matter as is contained in Dicey's own portion of the volume.

Mr. Wade's very readable Introduction takes the form of running comment, both commendatory and critical, on Dicey's text, with reference particularly to the master's three well-known basic principles: the sovereignty of Parliament, the rule of law, and the heavy dependence of the conventions of the constitution upon the law for their sanctions. On the sovereignty of Parliament, there is no essential disagreement; the Dicey interpretation of the rule of law, with its emphasis on individual liberty, is pronounced "difficult to reconcile with a state of affairs which the administrative activities of modern governments seek to support and augment" (p. xxviii); while Dicey's self-imposed exclusion of politics from the range of his discussion is believed to have betrayed him into an ex-

aggeration of the legal relationships of numerous constitutional conventions which are, after all, only political expedients. The volume's appendix contains a rich variety of materials from Mr. Wade's pen, all pertinent to Dicey's topics, with also an authoritative discussion of *droit administratif* in France contributed by Professor René David of the University of Grenoble. Especially notable is Mr. Wade's fifty-page analysis of the present (or rather pre-war) state of the law concerning public meetings and liberty of discussion.

The volume closes with some texts of laws, a table of statutes, a table of cases, and a good index; and altogether it represents a welcome enrichment of the literature of the subject with which it deals. In a recent review, Professor Robson humorously remarks that with the publication of the present edition the treatise ceases to be a public danger and a menace to realistic thinking about the British constitution, adding that "it almost becomes possible to recommend the book to students of law and politics!"

The indefatigable Professor A. B. Keith has revised and "largely rewritten" a manual of constitutional and administrative law which has long been standard in England, although less known in the United States. In point of fact, Professor Keith also prepared new editions of the Ridge volume appearing as recently as 1934 and 1937. The body of the work stands substantially unchanged except for the considerable amount of rewriting required to bring it up to date. There are now three introductory chapters on the nature, sources, and characteristics of English constitutional law; four chapters on Parliament; six on the executive; seven on the judiciary; three on foreign affairs and defense; two on finance; three on the Church; three on the status of the subject; and seven on the Empire. In the range of topics considered, as in its largely factual character, the work bears obvious resemblance to Anson's *Law and Custom of the Constitution*. An index of more than one hundred pages is in keeping with the truly encyclopædic character of the treatise.

Professor Keith's Introduction supplies comment on incidents "of great constitutional significance" occurring in 1939 while the book was in press, up to but not including the outbreak of the war. On the irrepressible question of the rule of law, he ventures the opinion that the doctrine is more, rather than less, important now than in the past, and that while it is "incompatible with the plans of those who recommend the destruction of the capitalistic scheme of society by means of orders in council, passed under an Emergency Powers Act and exempted from control by the courts," the view that the principle has already been undermined by the legislative and quasi-judicial authority of executive officers appears to represent possibilities rather than realities" (p. v). The system toward which the plans alluded to are pointed "might or might not be superior to the *status quo*," but certainly would be out of accord with the principle

of democratic liberty which at present, despite various encroachments, "can still fairly be predicated of the constitution of the United Kingdom." In that important sense, it clearly would be revolutionary.

FREDERIC A. OGG.

University of Wisconsin.

The Essentials of Japanese Constitutional Law. BY SHINICHI FUJII. (Tokyo: Yuhikaku. 1940. Pp. xi, 463. ¥12; $5.00.)

Whatever importance this book has lies, not in what it says, but in the mute testimony which it offers of the injury that has been done to academic thought in Japan by the recent "Clarification of National Polity," by the National Spiritual Mobilization Movement, and by the effort to create a "New Order" in East Asia. Although Professor Fujii (of Waseda) was trained in the United States, and since 1932 has been the director of the (Japanese) National League of University Professors, his treatise retains no suggestion of the liberal, progressive, or critical thought that might be expected under the circumstances.

A formal and theoretical interpretation of the leading clauses of the Japanese constitution of 1889 occupies two-thirds of Professor Fujii's volume. Here he does little more than paraphrase that document and its related instruments, ignoring statistics or detailed data and avoiding comment on the contemporary political crisis; nor, despite the accumulation of fifty years of constitutional experience, does he attempt to describe the government of Japan as a working institution. The chief interest in the volume, therefore, is found in the remaining one-third of its pages, where the premises for the study of the Japanese constitution are directly derived from the traditional folklore and mythology of Japan.

Essentially, Professor Fujii seeks to prove that the constitution of 1889 was not intended to alter the preëxisting bases of Japanese political society: "The first and most important fact about the Japanese constitution is that it is the revelation of the Great Way of the Sun Goddess through the august will of Meiji Tenno. . . . " (p. 381). It is not difficult to deduce from this that "the drafters of the constitution must be taken to have regarded the state as a kind of living organism and, comparing it to a human body, attributed all state activities to the brain of the Tenno [Emperor] Himself, i.e., the will of the Tenno" (p. 115). This was the ancient and immutable conception; for, as Professor Fujii observes, with a fine disregard for historical science, "the Japanese state is one that arose in the remotest past . . . but has persisted throughout all these long ages in the form in which it was founded, quite intact, quite entire, quite unimpaired" (p. 12).

The unalterable state-form looms large in Professor Fujii's picture. Did not the Sun Goddess herself define the "great spirit reinforcing the foundation of the country" when she proclaimed: "The prosperity of the

Imperial Throne shall be coëval with heaven and earth"? The antiquity of the Empire, the coëvality of the imperial throne with heaven and earth, the sacredness and inviolability of the Tenno, the unity of Tenno and subject, the worship of the gods and of the ancestors—all these combine to establish the Grand Way of the Gods. "For, indeed, the Tenno is a living god descended from the Sun Goddess, and in pursuance of the grand imperial policy coëval with heaven and earth, in obedience to the Sun Goddess' benevolent wishes, and in conformity with the precepts left by His predecessors, does He reign over and govern the country. . . . This fact, which to a cosmopolite may sound fictitious or otherwise incredible or as a mere form of national pride, has had its existence clear as noonday and solid as adamant, ever since time immemorial, and will last to the end of time" (pp. 52–53). The Tenno is not only a living god; he is the head of the Japanese family. Professor Fujii relies on bold assertion to prove his sociological point: "When, however, the Japanese state is referred to as a family state, . . . it is seriously meant that it did evolve out of a single family, no matter what objection can be raised against it. . ." (p. 7).

What is omitted is as revealing as what is said. The interplay of political interests generally, the conflict between military and civilian influences, the effects of industrialization, the formation of public opinion, and the political party system are neglected topics. Perhaps this treatise merely goes to prove what some Westerners have come to appreciate: that in a country where the principle of democracy is as alien as the Amharic tongue, it was never intended to construct a modern political system on the basis of Western concepts of constitutionalism.

H. Arthur Steiner.

University of California at Los Angeles.

Japan Among the Great Powers; A Survey of Her International Relations. By Seiji Hishida. (New York: Longmans, Green and Company. 1940. Pp. xv, 405. $3.50.)

Dr. Hishida has written a good survey of Japan's foreign relations. He has used official and other authoritative Japanese sources, some of them being utilized for the first time for the benefit of Western readers. He has also made frequent reference to American and British official documents, although apparently he has not consulted German and Russian sources. He has aimed to give an objective, fair, balanced history, and has been most successful in his treatment of diplomatic and legal controversies, where he has presented the views of the several governments concerned by exact quotations from official records.

But he is less successful in the narrative parts of his survey. Facts are sometimes omitted which non-Japanese writers generally regard as essential for an accurate history; for example, there is no reference to the

Japanese coercion of the Korean emperor in 1905 forcing him to sign away the rights of his country; nor to the assassination of Chang Tso-lin, generally charged against Japanese army officers; nor to the efforts of Japanese officials to prevent Chang Hsueh-liang, the Young Marshal of Manchuria, from acknowledging the authority of the Nanking government and thus effecting the unity of China. Occasionally, only the Japanese case is presented, with the result that the reader, if unacquainted with Far Eastern history, would have no adequate understanding of the situation: instances in point are the discussion of the railroad issue in Manchuria in 1931 (p. 289); the Shanghai Incident of 1932 (pp. 303–4); the alleged autonomy movement in North China in 1935 (p. 357); and the Marco Polo Bridge affair of July 7, 1937 (pp. 359–60).

The concluding chapters, while giving little idea of Chinese, American, or British points of view, do present clearly the fundamental principles of Japan's foreign policy and the attitude of the Japanese people toward the Far Eastern situation. Japan has a right to extend its control on the mainland of Asia since it "could live with safety only by securing a foothold on the Asiatic continent" (p. 374); it has the right to take whatever action it deems advisable without interference by the United States or Great Britain, since, having refrained from meddling in American or European affairs, it "most naturally expected the Western powers to refrain from meddling in Far Eastern affairs" (p. 386). Just as Anglo-American understanding and friendship were established by Great Britain's recognition of the predominance of the United States in the Western hemisphere, so would international understanding and friendship be established in the Far East by the recognition by the two English-speaking nations of Japan's predominance in that region. As for China, Japan, notwithstanding the failure of its repeated efforts toward reconciliation and coöperation, nevertheless is continuing to carry out its national mission, and in a "chivalrous spirit . . . is now leading her sister nations of Asia to a higher plane of political, social, and moral responsibility" (p. 388).

GEORGE H. BLAKESLEE.
Clark University.

Japanese Industry; Its Recent Development and Present Condition. By G. C. ALLEN. (New York: International Secretariat, Institute of Pacific Relations. 1939. Pp. x, 124. $1.00.)

The Problems of Japanese Trade Expansion in the Post-War Situation. By MIRIAM S. FARLEY. (New York: International Secretariat, Institute of Pacific Relations. 1939. Pp. x, 93. $1.00.)

Japan's Economic Offensive in China. By LOWE CHUEN-HUA. (London: George Allen and Unwin. 1939. Pp. 175. 7s. 5d.)

Much has been written concerning the causes of conflict between China and Japan. Much more will have to be written about the immediate and

permanent consequences of that conflict. The series of studies sponsored by the Institute of Pacific Relations, and known as "The Inquiry," covers both immediate cause and also effect; and it is this that gives such monographs as those of Professor Allen and Miss Farley their immediate value. The two titles indicate a different emphasis: Professor Allen's major concern is with the immediate past and the present, while Miss Farley's is with the future in the light of present tendencies. The former study is broader than the latter in that inquiry is directed into the domestic industrial structure in its evolution under the stress of pre-war and war conditions, while the latter is concerned with Japan's foreign trade. Thus Professor Allen's study should be read first, since it helps to establish the framework within which future problems of Japanese industrial and trade expansion can be considered objectively. While the two studies stand in this relationship, however, each is complete in itself and can be used profitably without resort to the other. Part I of Miss Farley's book, for example, gives a view of the effects of the war on Japanese foreign trade which, while brief, is adequate as a background for consideration of the problems of post-war adjustment examined in Part II. The first three chapters of Professor Allen's study, while valuable in themselves as a summary review of developments and tendencies in industrial development from 1926 to 1936, are especially significant in supporting the conclusion that the extended war-time control over industry, the elements of which are analyzed in Chapter V, represents an evolution rather than an innovation due to war conditions. This conclusion would have been reenforced if the author had carried his study back of 1926 and had had the space to analyze the relationship of government to industry historically and in more detail. The value of both studies is materially enhanced by the inclusion of a number of tables and an index. A third volume which can be read profitably in connection with the first two is *Japan's Economic Offensive in China*, although, written with the purpose of making out a case against Japan in China, from the standpoint of economic policy, it is naturally not as objective as are the first two studies reviewed. The case is made, nevertheless, by the objective method of presentation of data from which the reader can draw his own conclusions if he is not minded to accept the conclusions presented by the author. Here, attention is more definitely focused on the war, and on policy in relation to the war situation. Also the possibilities, from the economic standpoint, of continuation of the war by both sides are considered, whereas Professor Allen considers only that possibility in terms of Japan. As a partisan of China, Mr. Lowe naturally comes to more extreme conclusions than does the student. Professor Allen's conclusion with respect to the war is that "Japan's economic position is not so weak as to prevent her from carrying on the war for at least another year, and probably much longer, provided the Western Powers remain passive spectators of events." Both the

partisan and the student agree, however, that Japan's economic position has been steadily weakened under the stress of war.

HAROLD M. VINACKE.

University of Cincinnati.

War in the Twentieth Century. EDITED BY WILLARD WALLER. (New York: The Dryden Press. 1940. Pp. 576. $2.25.)

War in the twentieth century has distinctive characteristics; so too the contemporary theory of war in the social sciences. The tragedy of war, much greater than when sociologists talked cheerfully of the elimination of the unfit, leads social analysts to consider more painstakingly than ever before two questions—"why it happens and whether it can be prevented." Feeling that research on such questions requires more dissemination as well as more effort, Professor Waller has edited a symposium which, pooling the knowledge of thirteen authorities upon various phases of the problem of war, is designed to utilize the specialization characterizing present study of it and at the same time to give a needed view of the whole.

The question why wars happen once tended to be answered either moralistically or by reference to some single factor. In contrast, Professor Waller points out that, just as modern war is total and has causes deeply rooted in the whole of society, so the explanation of war must point out many interacting factors, psychological and social, ideological and economic, immediate and remote. So too the effects of war, both in war-time and in ensuing years, must be traced out in wounds and alterations in all important phases of social and political life. The only question about war which is made simple is that of its usefulness. Without treating war as sin, all the contributors are apparently against it, and in a way which hardly does justice to the question whether sometimes as a lesser evil war is not the instrument of relative good.

The work is so designed as to present an historical narrative from the war of 1914–18 to what may be considered its delayed continuation, and at the same time to introduce at appropriate junctures more abstract topical studies. Thus the various sections consider successively the following subjects: the general theory of modern war; the causes of the first World War and of the political débâcle in the ensuing interlude of peace; the effects of this war upon economic life, the arts, and the rise of fascism and Russian communism; the diplomatic preliminaries and outbreak of the present war; the effects of war in general upon different phases of society; and the prospects of civilization in the light of the present war. The contributors represent all the social sciences, together with literature and journalism.

Undoubtedly very useful to the student and the general reader, for

whom it seems primarily designed, the book is not equally valuable to scholarly workers in the social sciences, because the dissemination of knowledge and its advancement call for somewhat different methods. Certain portions are over-detailed narratives of matters well known to specialists, while some others are over-general presentations of subjects needing detailed documentation. Further, more light is thrown upon the effects of war than upon its causes, a problem demanding an approach not feasible in a semi-popular book. By no means the least of the volume's contributions is that from its shortcomings we may see better what type of study in the causation of war is now most needed. It is, it would seem, one which utilizes abundantly an historical technique, but which yet isolates and considers generically various factors such as economic forces, nationalism, and ideologies. Unless—and this book itself indicates it to be improbable—the scholar should really hit upon a practicable cure for war, it seems better that he should not too greatly condense or adulterate his results for popular consumption.

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The Twenty Year's Crisis, 1919–1939. BY EDWARD HALLETT CARR. (London and New York: The Macmillan Company. 1939. Pp. xv, 313. $3.00.)

Composed by an English scholar amid the political turmoil of the years immediately preceding the present war, this book is a monument to the human power of sane and detached analysis. In its examination of the collapse of the international system, it is utterly devoid of national bias, or that bitter denunciation of governments and men which marks so much recent literature dealing with the crisis. Devils and fools, it is held, have been no more numerous than in former times, nor have forces been generally more malevolent in one country than in another; it is simply that this generation of men has been operating within a framework of philosophical assumptions which attain only partial validity.

In the development of this thesis, Professor Carr has produced one of the most significant contributions to the systematic study of the theory of international politics that this reviewer has seen in years. Proceeding from a penetrating analysis of the dichotomy in political thought between "utopianism" and "realism" ("idealism" and "empiricism," "ethics" and "politics," or any other of William James' "pairs of opposites"), he recognizes the essential rôle of both the optative and indicative moods of human thought and admits his inability to synthesize them, but insists that wise political action must be founded on a working compromise between the perceptions to which they give rise.

In other words, in international as well as in domestic affairs, both moral and power considerations should be determinants of political decisions. To build on either alone is to build falsely. Nor is it sufficient that the powerful elements in international society should develop a specious morality to rationalize their own predominance; this is the natural necessity of every ruling class, but it does not save society from disruption where powerful discontents are not alleviated. The past two decades, Professor Carr asserts, were spent in a futile effort on the part of the Allies (and the United States) to maintain an uncompromising superiority and at the same time to develop an elaborate international "peace" system (proclaimed falsely as equally beneficial to all) to sustain them. "The inner meaning of the present international crisis is the collapse of the whole structure of modern utopianism based on the concept of the harmony of interests" (p. 80). There is no harmony, no general interest, in maintaining the *status quo*, says Professor Carr, if the strong refuse concessions to the weak.

The immediate implications of Professor Carr's reasoning justify Chamberlain's appeasement policy at least down to Munich (the manuscript was completed in July, 1939). He even insists that " 'yielding to threats of force' is a normal part of the process of peaceful change" (p. 277), justifying his position by domestic analogies. At what precise point concessions to new pretensions to power must be resisted lest the positions of the strong and one-time weak should be reversed, he does not say. But he does indicate (without apparent national bias) that if the world must choose between an experienced, mellowed imperialism and a young aggressive one, the former is preferable (p. 302). In the long run, he concludes, it is impossible to avoid the necessity of an international moral order resting on some hegemony of power (p. 213); but that power must be devoted to genuine social ends, and be exercised in a spirit of conciliation and compromise. He fails to resolve the dilemma as to how power may develop these moral attitudes; it simply "might," and it certainly "ought to."

Space does not permit the indication of some minor criticisms. However, it may be observed that there is insufficient warrant for the author's assertion that economic policies cannot be distinguished on the grounds of their "power" or "welfare" objectives. " 'Welfare states'," he says, "are states which, already enjoying a preponderance of power, are not primarily concerned to increase it . . . " (p. 153). Certainly he overlooks Scandinavia. Suffice it to say that the book is a compound of much human wisdom and deserves the attention especially of those to whom it is dedicated—"the makers of the coming peace."

WILLIAM P. MADDOX.

University of Pennsylvania.

A Documentary Textbook in International Law; With Questions and Problems. By Llewellyn Pfankuchen. (New York: Farrar and Rinehart, Inc. 1940. Pp. xxxii, 1030. $6.00.)

Recent textbooks on international law reveal a growing tendency on the part of their authors to utilize the vast and varied collections of source materials which have been made available to students since the World War. The narrow "positivism" of the earlier case books has been abandoned for a more truly positive treatment which draws its materials not only from adjudicated cases by national courts but also from the decisions of international tribunals, treaties and law-making conventions, diplomatic correspondence, and municipal statutes considered as evidence of national interpretations of international law. Professor Pfankuchen has given us an excellent example of this broader approach in his *Documentary Textbook in International Law.* He has reprinted fifty-five judicial decisions (twelve international, twenty-two American, nineteen British, one French, and one Greek) and has supplemented them with relevant selections from treaties, League of Nations texts, draft projects, diplomatic correspondence, and national statutes. On subjects which are not susceptible of illustration through documents, he has included selections from individual writings, such as Professor J. L. Brierly's concise and lucid discussion of "The Basis of Obligation in Modern International Law."

The documents are knit together by numerous notes which reveal the editor's wide range of knowledge, his discrimination and ability to discern the essential, and his capacity to pack a maximum of factual information within the necessarily restricted space at his disposal. A selected list of treatises, treaty and documentary collections, and periodicals on international law is included, and to each of the eighteen chapters is appended a brief bibliography chosen with a view to general availability of the items listed.

Probably no two international lawyers could be found who would agree on every text to be included in a documentary collection, but the reviewer hopes that it will not appear hypercritical to suggest that certain omissions detract somewhat from the value of the work. In the first chapter, on the "History and Theory of International Law," for example, more space should have been given to theories of the primacy of international law; for it is a sad fact that now more than ever before international lawyers must undertake to prove the reality of their subject. The monastic doctrine of Mortensen v. Peters and the West Rand Case should have been counteracted by selections illustrating other views of the relation between municipal and international law. The accompanying note is insufficient to fill this gap since it fails to point out that an apparent conflict between the two may be, and often is, resolved by international adjudi-

cation or diplomatic action. In the chapter on "Recognition," one notes the absence of any mention of *The Arantzazu Mendi*, *The Gagara*, and *The Jupiter*. Too exclusive an emphasis is placed upon the strict territoriality of the penal law in the chapter on "Jurisdiction," and the Cutting Case, which is surely one of the *causes célèbres* of the law of nations, is omitted. It is difficult to understand why the significant decision in the case of *The Christina* should not have been mentioned in the discussion of state immunity.

Some of the more obvious gaps might have been filled had the editor omitted the "Questions and Problems" which are appended to each chapter. These cover some ninety pages of the text, and although they are of some aid in analysis, should not be necessary for any competent instructor. It would seem that this valuable space could more appropriately have been devoted to more essential materials. It could, for example, have been more profitably used to correct the somewhat exclusive dependence upon Anglo-American sources throughout the book.

Professor Pfankuchen's work marks a step in the right direction in the teaching of international law. Students who have mastered its contents will have a firm grasp of the essential principles of the subject. The reviewer predicts that it will receive a warm response and extensive use.

LAWRENCE PREUSS.

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The Earth and the State. BY DERWENT WHITTLESEY. (New York: Henry Holt and Company. 1939. Pp. v, 618. $3.75.)

For the author of this volume, the central problem of political geography is the relation between geographic and political forms. Professor Whittlesey therefore sees descriptive political geography as an account of the distribution of political phenomena over the earth's surface which gives special attention to the relations between the patterns of states and the patterns of national environment. This clear and concise conception has been used as the organizing principle for most of the material of the book, but it unfortunately has not been adhered to consistently, with the result that certain sections do not seem to fit the general scheme. There is an unhappy juxtaposition of chapters dealing with descriptive geography mixed with geographical interpretation of history and chapters formulating general problems of geographical conditioning.

The greater part of the work is devoted to a description of the earth's surface by continents and regions, and in this field the author is very successful. The section dealing with Africa is an illustration of able analysis, and the chapter dealing with South America contains stimulating and suggestive passages. For each region there is a description of the operation of geographic factors, location, topography, and climate on the life of the

region and their effect on the size of the evolving units, the location of the capitals, the process of integrating outlying regions with nuclear cores, and the direction of expansion. Each section contains a concise statement of the influence of the most salient geographic features on the political history of the country. Admirable as some of these summaries are, it is none the less regrettable that the author has placed so much emphasis on the past and so little on the present. There is ample treatment of Aquitania, Franconia, and the Teuton Knights, but not very much about the meaning of topography and location of the present relations among the states. The author may have felt that the historical interpretations presented would enable a careful student to make his own geographic analysis of present-day political relations, but I am afraid that a good many of his readers will miss the relevancy of this book for the contemporary scene.

The analytical and descriptive section covers Europe, Africa, and the Western Hemisphere; but Asia and Australia are missing. China is mentioned in a few paragraphs in a chapter on the size of the state, and India in a section dealing with the British Empire; but in both cases the treatment is inadequate. If the purpose of the book is to give a more or less complete picture of the earth's surface, the omission of these two continents is serious. The present struggle in the Far East is at least as significant for the United States as the war in Europe, and a description of its geographic setting might serve to clarify American thinking.

The part of the book dealing with generalized problems of geographic conditioning is not as good as the descriptive chapters, and the least successful is the section dealing with geography and law. There is an apparent confusion between text and map. The former suggests that there might be a correlation between geographic environment and legal system, and the latter seems to indicate a complete absence of any such correlation. This map was suggested by a map by John H. Wigmore ("Present-Day Legal Systems of the World," in *Geographical Review*, Vol. 19 [1929], facing page 120), and purports to illustrate the distribution of the great legal systems—Roman, English, Slavic, Mohammedan, Hindu, Chinese, and Japanese—while also indicating that each of these legal systems is operative in the most varied geographic environment. They can be found in high mountain valleys surrounded by snow-capped peaks, on well watered hilly slopes, broad plains, semi-arid deserts, and irrigated river deltas with humid tropical climate. Clearly, the Wigmore map cannot be used as a starting point for a problem in correlation between legal and geographic forms. That requires a formulation in terms of concepts much more specific than the concept "legal system" and a type of map which indicates geographic regions. Professor Whittlesey has himself suggested the correct approach and the correct scale for this type of problem in his

discussion of the relation between riparian law and the principal use of waterways as influenced by climate.

Notwithstanding its obvious shortcomings, the book represents a welcome addition to the slowly growing literature of political geography for adults. If the treatment in many sections is somewhat sketchy and tentative, this is undoubtedly due more to the nature of the subject-matter than to inadequate preparation.

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BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

The Federal Trade Commission (Silver Anniversary Issue of the *George Washington Law Review*, Vol. 8, No. 3, Jan.–Feb., 1940, pp. 500), edited by S. Chesterfield Oppenheim, is a valuable work for rounding out and bringing up to date one's knowledge of the Federal Trade Commission. Being a symposium by seventeen authors, the book, of course, does not fit together with complete smoothness, and there are certain gaps in background material that would make it difficult reading for a person with no general knowledge of the subject. At the same time, there are some very illuminating articles. In the light of the present controversy over procedure, the article on "Federal Trade Commission Procedure and Practice," by Robert E. Freer (one of the present Commissioners) is particularly interesting. So also, although of course not wholly new, is Pendleton Herring's "The Federal Trade Commissioners," describing the background and outlook of the men who have made up the Commission. The two articles on the Robinson-Patman Act, by Albert E. Sawyer and S. Chesterfield Oppenheim, are very good indeed, even though by reference to difficulties in matters of cost accounting and otherwise, they make one feel that the task of enforcement is almost hopeless. These two authors demonstrate a quality of analysis and breadth of understanding of the relation of governmental regulation to the functioning of the economic system that some of the other articles lack. We might have hoped for a statement of the Commission's general views with respect to the broader phases of the American economic scene, or at least for the inclusion of Willis J. Ballinger's notable memorandum presented on behalf of the Commission to the Temporary National Economic Committee and printed in the *New York Times* of March 1, 1939; but perhaps that lay outside the scope of the present work. The other articles are: "Highlights in the Evolution of the Federal Trade Commission," by Huston Thompson; "The Place of the Federal Trade Commission in Administrative Law," by J. Forrester Davison; "The Commission's Jurisdiction over

Practices in Restraint of Trade," by Gilbert H. Montague: "Unfair Competition and the Federal Trade Commission," by Milton Handler; "A Review of the Trade Practice Conferences," by Sumner S. Kittelle and Elmer Mostow; "Trade Practice Conference Rules and the Consumer," by Saul Nelson; "The Federal Trade Commission's Contribution to Industrial and Economic Analysis," by W. H. S. Stevens; "Investigatory and Enforcement Powers of the Federal Trade Commission," by Brunson MacChesney and Walter D. Murphy; "The Export Trade Act," by Ellen L. Love; "Federal Trade Commission Price Conspiracy Cases—1935–1939," by Ross R. Guthrie; and "Federal Trade Commission Enforcement of Section 3 of the Clayton Act," by M. E. Rose. There is an excellent bibliography by Madge E. Harkness; also brief notations on investigations made by the Commission from its creation to 1939, and the texts of the Federal Trade Commission Act, the sections of the Clayton Act administered by the Commission, the Robinson-Patman Act, the Export Trade Act, the Sherman Act, and the Miller-Tydings Act. Throughout one is impressed by two things: first, the early hostility of the courts and the effectiveness of that hostility in thwarting the declared policy of the people's representatives in Congress, and, second, the fact that the Commission seems now to have come of age, as indicated by maturity of procedure and loosening of the judicial apron-strings. One cannot help wondering what the final evaluation of judicial control in America will be, or, for that matter, what will be the outcome of our experiments in economic regulation. The present volume contributes something to an answer to the first question by indicating the degree of recent judicial retreat from power, but very little toward an answer to the second.—JOHN THURSTON.

In ninety-two pages, Wilson K. Doyle manages to open up a number of the vital problems relating to the *Independent Commissions in the Federal Government* (University of North Carolina Press, pp. 105, $1.50). He deals first with the "independence" of the commissions in terms of their freedom from or subjection to presidential influence. Assuming, without discussion, that such influence is bad, he comments on the legal basis of the President's removal power, and the power of appointment, and suggests ways of reducing presidential influence to a minimum. Secondly, he discusses the suitability of the independent board type of organization for the handling of the functions assigned to them. He believes that their policy-formulating and administrative powers would be better performed under single-head control rather than by independent boards, and that it would be desirable to segregate the judicial from the other powers of the commissions. A third problem arises from the exercise by these commissions of both policy-determining and judicial functions and the need for estab-

lishing effective responsibility to assure the proper performance of each. Dr. Doyle suggests that some device in the nature of a standing congressional committee might be set up to help coördinate and supervise the work of the commission in the field of policy formulation, and he speaks with apparent approval of the creation of administrative courts to take over the judicial duties of the commissions. In conclusion, he proposes that most of the independent commissions be put into executive departments under single-head control, that they be required to hold hearings in the exercise of policy-formulating powers, and that they should, when possible, exercise such power in the form of general regulations rather than specific orders. Either their judicial powers should be given to administrative courts, or, assuming that such functions are to be exercised in furtherance of the public interest, judicialized procedure should be eliminated. This is a thoughtful and provocative study based on penetrating analysis and sound judgment. Its extreme brevity prevents it from touching at all a number of important problems relating to the commissions, and from dealing very thoroughly with those which it does cover.—Robert E. Cushman.

The existing original documents and materials relating to an extremely colorful series of incidents in the history of the development of the American Union are to be found in *The Michigan Constitutional Conventions of 1835–1836* (University of Michigan Press, pp. xi, 626, $5.00). The story has to do with a territory which assumed the right to form a state constitution upon the basis of the Northwest Ordinance, without a congressional enabling act, and for a brief period contested the authority of Congress to lay down conditions for admission to the Union. Except for the Journals, the records of the three conventions held in 1835 and 1836 have never been published officially. Dr. Dorr has collected these materials from scattered sources, especially from contemporary newspapers, and careful and painstaking editing has pieced together the Journals and other sources to present as much of the debates and proceedings as it has been possible to find. Necessarily incomplete as to a number of subjects, the proceedings thus compiled make a substantial contribution to the body of available political and historical materials. Part II comprises all of the committee reports and a number of other documents of the conventions. Part III brings together the public acts of the territorial legislature and the Congress which relate to the admission of the state into the Union. Appendices include roll-call records of the conventions, the constitution of 1835, and a bibliographical note. Dr. Dorr's Introduction is an incisive account of the historical events and a careful analysis of the political background and surroundings of the conventions.—W. Rolland Maddox.

Crusaders of Liberalism (Harcourt, Brace and Co., pp. 422, $3.50), by Louis Filler, is an account of that journalistic movement called muckraking which had such remarkable repercussions upon the American political scene in the era of the elder Roosevelt. Filler, himself a journalist, has written no academic dissertation, although the student will find his chronology, bibliography, and index exceedingly useful; for this is a more than competent survey of the source materials. He does not attempt to catalogue the achievements of the muckrakers, but rather treats their concern for housing, pure food and drug legislation, conservation, and all the rest, as lively issues of the day. He pictures the muckrakers, not as sensationalists, but, as "fully informed, fully rounded men, capable of expressing and interpreting large sectors of the national life as they had found it." Dealing with the sordid facts of contemporary America, they were nevertheless idealists, possessed of social conscience and an honest zeal for reform. Coming counter with the forces that were endangering their country, they wrote in indignation and produced a literature of exposure. Their panacea—"the best cure for the evils of democracy is more democracy"—now seems a bit naive, but their methods were always practical, based on objectivity in reporting and balanced understanding in reform. The author emphasizes the socializing technique of muckraking, for he observes today, in the rebound from revolutions, a popular revival of democratic sentiment which again makes the processes of muckraking feasible. While admitting that the muckraking movement disappeared by default in the emotionalism of 1917, he apparently sees in the current resurgence of chauvinism no serious obstacle to the return of the crusading liberals and the reënergizing of America by the literary journalists. This interposition of a theme in political science, however, is not too successful. Attempts to discover more than a similarity of surname in the administrations of T.R. and F.D.R. are never very convincing. Between the two Roosevelts, there is a generation who knew not only the disillusionment following the World War, but the spiritual exhaustion of economic depression. The young men of T.R.'s day could be realistic and still optimistic because they had not lost that faith from which reform takes its motivation. The young men of F.D.R.'s day are equally realistic, but their empiricism leads rather to cynicism.—MARIAN D. IRISH.

In *The Taxation of Railroads in New Jersey* (Princeton University Press, pp. viii, 208, $2.50), Professor Harley L. Lutz presents a critical analysis of the practical application of the *ad valorem* principle in railroad taxation. While the author does not repudiate the theory underlying this method of taxing railroads, he does show conclusively that the statutory and administrative development of railroad *ad valorem* taxation in New

Jersey has produced not only injustice but a virtual breakdown of the system of railroad taxation in that state. The root of the difficulty has been the scheme of disjunctive or piecemeal valuations, with its consequent exaggeration of physical cost factors. The classification of railroad properties, although purely arbitrary and artificial, has been applied in determining the local share of the tax. This seriously complicates matters, since proposals for reform, to be acceptable, must make provision for sharing the railroad revenues with the municipalities. The author makes alternative suggestions for improvement of the situation. The changes which he considers fundamental to any adequate reform in the *ad valorem* system are revision of the assessment technique to include appropriate consideration of income or earnings in the ascertainment of a reasonable "true value"; appraisal of the several railroad systems as units or going concerns, on the basis of such consideration of cost, earnings, and other factors as, in the assessing officers' judgment, would be given to these factors by buyers and sellers respectively in arriving at a fair market value for such properties; and allocation of a due proportion of the unit value of each railroad system to the state. As an alternative, the author suggests that New Jersey might base the tax on the gross receipts, but interpret it as a tax "in lieu" of the present tax on the capital value of the property. Considerable attention is given also to the problem of establishing the rates and to that of allocating the revenues. Professor Lutz's lucid style and his cogent analysis of the New Jersey railroad tax situation have produced a study that should enjoy high rank and significance in the literature on railroad taxation.—MARTIN L. FAUST.

In his *Labor and Democracy* (Princeton University Press, pp. 194, $2.50), William Green sketches the history of the labor movement during the last half-century. The book begins with a description of deplorable working conditions in the coal mines where he and his father worked, his rise to leadership in his local union, and his election to the Ohio legislature. He advances the opinion that "Labor can no longer depend primarily on friendly outsiders to present its case in legislatures and on administrative commissions. It needs to have men who have themselves come up as laborers and as loyal union members and who have studied and know the technical problems involved." Mr. Green does not discuss the extent to which the labor movement succeeded in placing labor men in official positions, nor does he describe organized labor's non-partisan procedures in electing friendly outsiders to these offices. In a running commentary, he outlines labor's struggle for the acceptance of collective bargaining, enactment of compensation laws, fair payment statutes, safety measures, and hours and minimum wage laws. To this he adds his sentiments concerning the blight of child labor and the importance of unemployment

insurance and old age pensions. One is disappointed at the lack of an extended treatment of the cleavage in the ranks of the labor movement. There is no comprehensive analysis of significant court decisions affecting labor relations. Mr. Green believes that labor holds in its hands the future of democracy, and that labor can further justify its useful existence by training the masses in the democratic process. His conception of democracy is that it "is not confined to the political and economic fields; it is a way of living applied to the whole of existence. It implies principles of freedom that must continuously be applied to human relationships under changing conditions." While Mr. Green emphasizes the principle of majority rule in a democracy, he expresses no opinion on minority rights. It is regrettable that a leader of such an important movement has not produced a more profound and factual treatise on labor and democracy.—BELLE ZELLER.

At Estes Park, Colorado, June 19–23, 1939, met a group of government officials, college professors, industrialists, and business and professional men. *Government, the Citizens' Business; Proceedings of the Citizens' Conference on Government Management* (School of Commerce, Accounts, and Finance, University of Denver, pp. xviii, 624) is the record of the Conference. The first and last of its eight parts contain the opening and closing speeches. The others report the proceedings of the six round tables into which the Conference was divided—"Government Income and Outgo," "Financial Management and Control," "Organizing Government for Effective Administration," "Government in Social Security and Relief," "Citizens' Groups in Government," and "Government and the Consumer." The sponsor was the department of government management established in September, 1938, by a grant from the Alfred P. Sloan Foundation. Donald C. Stone hit the keynote with insistence that intelligent, informed "moral leadership" is essential in attaining good government. This was proclaimed as a new kind of conference in which attitudes were modified in the give and take of discussion, but it appears that for the most part the participants were as far apart at the end as at the beginning. Here is, however, inspiration for those engaged in the unending crusade for good government. Students of government and administration will find the Griffenhagen plans discussed by E. O. Griffenhagen, and the reaction that these plans for reorganization in Wyoming and Colorado received in some quarters (pp. 294–315). Of special interest are (1) testimony of Frank G. Arnold as to irreguiarities in public purchasing (pp. 189–215); (2) R. George Wood's appeal for party loyalty as a necessary factor in making appointments to the public service (pp. 324–6); (3) the proposal of a Denver M.D. to enfranchise persons over 16 or 18; (4) Colorado's experience with old age assistance (pp. 386–93); and

(5) a report on the Mormon relief program by J. Reuben Clark, Jr., First Counselor of the Church (pp. 409–422). The conference, at the very least, was a distinct contribution in the field of adult education.—ROBERT W. MCCULLOCH.

Professor Austin F. Macdonald's *American State Government and Administration* (Thomas Y. Crowell and Co., pp. xii, 612) is a revision of a similar work published in 1934. In addition to bringing his material up to date, the author has added a brief but useful chapter on interstate relations, and has made a more logical chapter arrangement by dividing the book into two parts, one of which deals with the legal and structural aspects of state government and the other with administrative problems and practices. The volume combines, in admirable fashion, the factual or "objective" with the critical or realistic treatment. Professor Macdonald's preoccupation with the states has not distorted his concept of the federal relationship, and in doing justice to the problems of administration, he has not denied or obscured the importance of structure and organization. Finally, he manages to include a surprising amount of detailed information about the individual states without producing the effect of a series of statistical abstracts. In a treatise of such great scope and detail, errors are unavoidable. As samples, the official title of Nebraska's unicameral legislature is given as the "Senate," and the extra compensation of members for attending special sessions is shown as being limited to ten dollars a day for ten days. Actually, Nebraska's lawmaking body is officially styled the "Legislature," and members are not allowed *any* additional remuneration for special sessions. Further check might reveal similar misstatements concerning other states, but it should be emphasized that these are not grave errors, and that they do not prevent the book from being quite satisfactory as a text.—ROGER V. SHUMATE.

City Manager Government in Austin (Public Administration Service, pp. iv, 93, $0.60) and *City Manager Government in Jackson* (*Ibid.*, pp. iv, 52, $0.50), both by Harold A. Stone, Don K. Price, and Kathryn H. Stone, are monographs in the series of case studies of manager cities sponsored by the Committee on Public Administration of the Social Science Research Council. The purpose of these studies, as stated in the foreword by the secretary of the Committee, is to examine the practical operation and results of the city manager plan of government; and it can be said that the authors have accomplished this purpose. The industrial, social, and political conditions peculiar to each city are analyzed and their effects on the operation of the manager plan are shown. Although, as the authors point out, there are no exact means for measuring its success, the achievements of manager government are compared with those under preceding forms,

and are tested in accordance with such criteria as the expansion of services, adequacy of personnel and equipment, public support, and administrative practices. Viewed in the light of these factors, the manager government in Austin seems to have been a success. On the other hand, in Jackson (Michigan) this form has made little or no fundamental change in the way the city has been managed. Although the manager should not become involved in factional or partisan politics, both studies emphasize the necessity for political leadership and the maintenance of adequate public relations. Both emphasize the fact that a successful manager government entails something more than merely adopting a manager charter. The monographs are well written. The organization is good, and the materials are well arranged. Neither study contains an index or table of contents; but these are minor defects. Undoubtedly, when the publication of the series is completed, the student of local government can improve his generalizations and will have a broader and more accurate view of the operation of this form of government.—W. V. Holloway.

Victor D. Brannon's *State Auditor and Fiscal Control in Missouri Counties* (University of Missouri Studies, Vol. XIV, No. 4, pp. 107, $1.25) is a survey of the historical development and present status of state control over county finance in Missouri. The study is based principally upon official materials, including state statutes, court decisions, state and county reports, and records in state and county offices. The author's primary concern is with the state's 109 rural counties, only incidental consideration being given to the five urban counties which enjoy somewhat more "home rule" in financial matters. The development of state control in Missouri seems to have followed the usual pattern, earlier laws providing merely for advice or assistance ultimately giving way to provisions authorizing the state supervising agency to take action of a compulsory character. At present the auditor is authorized to prescribe a uniform system of accounting and reporting, make periodic audits of county accounts, and give advice and information on budgeting and other matters pertaining to local financial administration. He does not, however, have power to prescribe forms for budgets and financial statements; and with respect to borrowing he exercises relatively little authority. In addition to analyzing the existing situation, the author makes certain suggestions for improvement. These include empowering the auditor to prescribe forms for budgets and financial statements, and providing that officer with an adequate examining staff.—Clyde F. Snider.

Considering the present attitude of the majority of Americans toward the Chinese, it is hard to realize that at one time in our earlier history a strong anti-Chinese feeling was prevalent in this country. Elmer Clarence Sand-

meyer's *The Anti-Chinese Movement in California* (University of Illinois Press, pp. 127, $1.50) is an attempt to trace the origins and development of anti-Chinese feeling centered in California from its beginnings until the movement died. The author has succeeded in his principal objective, that of an unbiased analysis of this movement. Mr. Sandmeyer surveys the causes for Chinese immigration to this country and finds that the "motives of political and religious liberty" which actuated European immigrants were absent in the case of the Chinese. He relates the anti-Chinese movement to the anti-slavery feeling in the United States and evaluates the factors which led Californians and others to oppose Chinese immigration. Here he finds that racial antagonism and economic competition were reinforced by charges of immorality among the immigrants. There follows a description of the local measures adopted by the Californians to solve the problem, resulting in appeals to the national government for action and ending in entire exclusion of Chinese laborers, with rigid restrictions on the admission of others. Mr. Sandmeyer's work fills another gap in the history of emigration to the United States, and is a valuable work of reference.—WILLIAM C. JOHNSTONE.

In *Migration and Social Welfare* (Brattleboro: E. L. Hildreth and Co., pp. 114), by Philip E. Ryan, the Russell Sage Foundation has published another useful study. The author, having been secretary of the late Council on Interstate Migration, has background for presenting "An Approach to the Problem of the Non-Settled Person in the Community." After a summary of migration in the United States, the conflicts of migrant and the community are considered under such topics as "Employment"; "Health"; "Housing"; "Education"; "Prevention of Delinquence"; "Recreation." A variety of sources are freely cited and quoted. The relevancy of the monograph for the political scientist is found chiefly in the concluding chapter, "Towards a National Policy." On page 90, twenty-four federal governmental agencies are listed as having an interest in population mobility. The author concludes by emphasizing the necessity for "the establishment of federal responsibility for coördinated, long-range planning toward a national policy for migration." A topical bibliography and an adequate index add to the value of the publication.—MONA FLETCHER.

Charles M. Thomas's *Thomas Riley Marshall: Hoosier Statesman* (Oxford, O., Mississippi Valley Press, pp. 295, $3.00) adds little to our knowledge of the late Vice-President or to the technique of studying political leaders. Marshall was a small town man with the virtues and vices of the species, allegedly characterized by President Wilson as a "small caliber man." This appraisal seems not inaccurate. Born in Maine or Mississippi,

Marshall might have reached the presidency of the local Rotary Club, but living in a doubtful state he served the purposes of Tom Taggart, though never his bond slave. Marshall narrowly escaped the presidency, and the author thinks, plausibly enough, that mediocrity might have accomplished what an enlightened but stubborn leadership failed to achieve, the entrance of the United States into the League of Nations with mild reservations. As it is, Marshall is remembered chiefly as a Throttlebottom with a sense of humor—the same tang of the soil which lived in James Whitcomb Riley.—J. B. SHANNON.

Maine cities and towns got the right from the legislature to zone in 1925, but in 1940 the list of zoned places stood at six. The doubts and fears and misunderstandings which have prevented a more general use of the law should be cleared up by the carefully prepared *Zoning Manual for Maine Towns* (pp. 89), the eleventh publication by the Bowdoin College Bureau of Research in Municipal Government. There are brief but complete chapters on the nature of zoning and on its legal basis and the procedure in drafting a zoning ordinance; but the heart of the book is a suggested ordinance, fully annotated and readily adaptable to any Maine community. The relation of zoning to community planning is not forgotten, and helpful suggestions on planning procedure are included in the final chapter. The authors are Orren C. Hormell and Roy H. Owsley.—FLAVEL SHURTLEFF.

In their *State and Local Government in Texas* (Macmillan Co., pp. ix, 586, $2.50), Caleb Perry Patterson, Sam B. McAlister, and George C. Hester have made a notable contribution to the literature of state and local government. The volume should serve as an admirable handbook for alert citizens as well as a stimulating text for the study of the state constitution and citizenship. Noteworthy are its departure from conventional style through avoidance of voluminous details without slighting pertinent data, its current and stimulating illustrative materials, and its functional treatment. Constitutional fundamentals and practice are presented clearly and with the obvious design of facilitating transfer. Sufficient questions and problems are included to stimulate the reader without rendering the book a catechism. Altogether, this is a distinct contribution to the current movement for the better teaching of government.—DAVID W. KNEPPER.

FOREIGN GOVERNMENT AND POLITICS

Little, if any, justification is necessary for serious studies of systems of central governmental subsidies to local government. Professor Howard R. Bowen, of the State University of Iowa, believing that America can learn profitable lessons from English experience, has written a competent

monograph on *English Grants-in-Aid; A Study in the Finance of Local Government* (University of Iowa, pp. 156, $1.00). Students of political science will extend a particularly hospitable welcome to this work of a student of economics. The author, though he displays an acute apprehension of, and a humane sympathy for, the broader political and social implications of his subject, not unnaturally places his primary emphasis on economics. His particular interest is to investigate the effects of English grants in distributing local government costs among the several income groups, the principles and results involved in apportionment of the grants among the several local authorities, and the efficacy of English grants in stimulating local activity. The general conclusions, carefully analyzed and qualified, are that grants, by shifting some part of local government cost from ratepayers to taxpayers, effect to a certain extent a more equitable distribution of this cost, that the English system effects no appreciable redistribution of available resources among the several local areas, and that the grants have in considerable measure succeeded in encouraging and improving local activity. The study is buttressed with extensive use of the apparatus of economic research. There are, in a short monograph, more than twenty tables; there are several charts; and there are two relatively long appendices. Unfortunately, the tables and charts involve no small strain on the eyes; and, in general, format, printing, revision, proofreading, and the like leave a good deal to be desired. There is no index. These things involve little fault on the part of the author. It is merely regrettable that considerations of form detract so much from so meritorious a study.—R. K. Gooch.

In Elsa de Haas' *Antiquities of Bail; Origin and Historical Development in Criminal Cases to the Year 1275* (Columbia University Press, pp. viii, 174, $2.25), we have the first intensive study of the writs involving release on bail up to the time when the first statute governing this practice was passed in 1275 at the instance of England's great law-giver, Edward I, who clarified the bail situation by means of several great statutes. Prepared with the assistance of Professor Julius Goebel, Jr., of the Columbia Law School, who guided the course of the research, Miss de Haas' study involves a consideration of: (1) "The Anglo-Saxon and Norman Periods: Theories of the Origin of Bail"; (2) "Bail and Frankpledge System"; (3) "Writs Governing Release: *De Homine Replegiando; De Manucaptione*"; and (4) "Writs Governing Release: *De Odio et Atia; De Ponendo.*" The administrative machinery through which bail operated is described in the course of the study of the theories of bail origin, and when extant records make it possible, an attempt is made to set forth the procedural details governing bail practice. Since the records of procedure are negligible for the period when retribution for crime was left largely to private

initiative and energy, it was not possible to trace the outcome of controversies during that period. While the nature of the practice of wergeld payments is indicated in the Anglo-Saxon laws and the Norman law treatises, such as the *Leges Henrici Primi* and the later so-called *Leges Edwardi Confessoris*, the realism of concrete situations is lacking because accounts of individual cases are not given. When royal justice became an accomplished fact, royal rolls were preserved, and some have been made accessible in print. The descriptive detail of bail as an administrative study begins at this point. In making available this and other information concerning our legal beginnings, a useful purpose has been served. In general, it may be said that Miss de Haas' investigations of the ancient common law writs supports the view that those scholars who find the origin of bail in the contract situation arising out of the wergeld payment procedure most nearly approximate the true situation. In the appendices, consideration is given to "The Effect of the Assize of Clarendon on the Method of Instituting Actions as Recorded in the *Close Rolls*"; to "The Nomenclature of Release as Recorded in the *Close Rolls*"; and to "The Exceptional Uses of the Writ *De Homine Replegiando.*" Plates illustrating pages from the manuscript materials used are contained in the monograph, and an index and bibliography are appended.—F. R. AUMANN.

Both the general reader and the specialist should welcome Herbert Rosinski's *The German Army* (Harcourt, Brace, pp. 267, $4.00) as an excellent summary of the history of German military organization and policy from the time of Frederick the Great to the summer of 1939. Writing with the precision and authority of a War Ministry expert, the author traces the continuity of tradition that has characterized the German officers' corps since its Prussian beginnings. To the reforms of Stein, Scharnhorst, and Gneisenau is credited the superiority of nineteenth-century German military direction. The World War is treated by Rosinski as a break in the tradition of German strategy, occasioned by the failure of Ludendorff and Hindenburg to grasp the underlying significance of Clausewitz' ideas, as transmitted by Moltke and Schlieffen. In a brief chapter, the reorganization effected by Seeckt and the fateful rôle of the army under the Republic are described, and some new material presented. Since 1933, the author believes, there has been a steady diminution in the independence of the army, resulting from its absorption in rearmament, and its reliance upon the Party for mobilization of popular support for a mass army. But the new "national unity" has been achieved by force and propaganda and is a precarious basis for military organization. Rosinski thinks that the army has been expanded too rapidly in recent years for the creation of an adequate officers' corps, and has so far

failed to recover its superiority in the "higher study of war"; there is no Clausewitz, Moltke, or Schlieffen among its leaders. Its strategists have not as yet elaborated any clear doctrine of war, for the ideas of "total war," "war of movement," and "lightning war" all struggle for supremacy. In addition, military action is for the National Socialists only one aspect of the "extended strategy" of conquest, and the author concludes that by delivering itself into the hands of the Party, the army has lost its freedom of action in the strategical sphere. Final decision rests with the political leader, in whom, Rosinski writes in 1939, "the German army may find the prophet who sends it to Armageddon."—ALFRED V. BOERNER.

Chinese labor, which far outdistances Japanese in misery and cheapness, has long been one of the most discussed and least analyzed factors in the Far East. Much scattered, unreadily assembled material has existed in Western languages, but a large part of this has been polemic, defending the Kuomintang's *de jure* reforms or else championing the world proletariat. John Lossing Buck, of Nanking University, recently prepared some authoritative surveys of Chinese agriculture, and now Augusta Wagner presents a lesser but highly useful work, *Labor Legislation in China* (Peking: Yenching University, pp. iii, 301). This is a well-written, objective résumé of China's seventeen years' experience with systematic labor legislation, and possesses the special merit of being well-grounded in Chinese-language sources. The rise, present extent (less than one-fifth of one per cent of the total population), and condition of China's industrial labor are outlined against a background of general labor conditions. The author, examining, in detail, the ambitious Chinese legislation issued since 1923, concludes that the gap between legal standards and current conditions has been nearly maximal in China, and that the progressiveness of the law is testimony to its unreality (p. 114). Child labor, filth, disease, overcrowding, under-payment, vacationless years, and intimidation continued, although slight but promising beginnings were made in labor statistics, factory inspection, etc. The special labor problem of multi-jurisdictional Shanghai is analyzed; while native-Settlement conflicts have impeded effective labor control in both Chinese and foreign factories, the basic difficulty has been the precariousness of Chinese industrial enterprise. The contributions of the I.L.O. and the Christians are described as restricted but meritorious. The book contains helpful bibliographies, but no index. Since the study stops at the opening of the present war in 1937, no material is given on free China, and no predictions are made as to the effect of the invasion, other than allusion to the fact that all labor law, slight as it was, has been swept away. This study, which will be valuable to everyone interested in the Far East, in labor, in Pacific

commerce, and in revolution, certainly lends point to the assumption that the Japanese army has taken over the world's greatest relief problem.—PAUL M. A. LINEBARGER.

Anyone hurriedly leafing through Peter Manniche's *Denmark; A Social Laboratory* (Copenhagen: C.E.C. Gad, pp. 216, $1.50) might get the impression that this little volume is merely a traveler's handbook issued for the purpose of enticing tourists to visit the land of the Danes. To be sure, the 150 photographs occupying nearly one-third of the pages help to give that first impression. A careful study of the book, however, makes it clear that the objective of the author is to pack into a few pages an accurate and scholarly presentation of those features of Danish culture which rightly make Denmark a social laboratory. The photographs, well taken and well printed, cover subjects all the way from cabbages (figuratively) to kings (literally), and constitute an intimate revelation of life and conditions in the tiny northern democratic monarchy. The coöperative movement, of course, dominates the entire scene, as it is portrayed by Mr. Manniche, who is the principal of the International People's College, Elsinore. Two of the six chapters deal directly with the coöperative movement on the farms and in the municipalities—Elsinore being discribed as a typical municipality. The remaining four chapters, dealing with (1) the independent farmers (not independent of the coöperatives, however), (2) the folk high schools, which to a large degree constitute a training ground for coöperation, (3) social legislation, and (4) the Danish village, all reveal the extent to which the philosophy and the practices of cooperation color and affect almost every phase of Danish life. Even though the volume is not intended to stimulate the tourist trade, the inevitable result of reading its text and enjoying its illustrations is to feel an urge to make further excursions into Denmark—if not actually upon Danish soil, at least into sources of information both documentary and secondary dealing with the country.—BEN A. ARNESON.

The princes of the Indian protected states have denounced fascism, declared their devotion to freedom and democracy, and are supporting the British in their current war of liberation against Nazi Germany. Professor K. R. R. Sastry, of the University of Allahabad, in his *Indian States and Responsible Government* (Allahabad Law Journal Press, Allahabad, India, pp. 142, 7s. 6d.), points out how irresponsible are the rulers of the 500-odd Indian states, which are the last relics of feudalism in India. The Indian princes are absolutists, out-Hitlering Hitler himself. If democracy is really what they favor, their first concern should be its introduction in their own states, where autocracy reigns supreme. Professor Sastry fails to bring out, perhaps for reasons of prudence, that the princes are mere

puppet rulers comparable to similar devices set up by Japan in Manchukuo and China. He does, however, make clear that these feudal chiefs of India are anachronisms; but he is not in favor of their "abolition." He asserts that "if the states persist in their medieval folly, nemesis will overtake" them—which is only a pious hope and can hardly be regarded as a solution of the problem.—SUDHINDRA BOSE.

In the preface to *John Frost; A Study in Chartism* (University of Wales Press Board, pp. 355, $3.50), David Williams states that his purpose is not to write another general history of Chartism, but rather to tell the complete story of the crucial riot at Newport, Monmouthshire, in November, 1839, and to recount the life of John Frost, the Chartist leader. He has succeeded admirably, and one cannot imagine that his chronicle will be greatly amended or expanded by further research. Indeed, for the reader whose interest in the subject is less than omnivorous, the book's chief fault is the inclusion of a multitude of details, sometimes quite irrelevant to the main theme. These interfere at times with the tragic sweep of the narrative—from the movement's idealistic beginnings to the pitiful fiasco of the march on Newport and Frost's trial for treason. There is a useful appendix on Chartism in Wales, 1839–48, and a good index.—MORLEY AYEARST.

INTERNATIONAL LAW AND RELATIONS

Amidst the early literature coming out of Europe's present war are Duff Cooper's *The Second World War* (Scribner, pp. 346, $2.50) and Helen P. Kirkpatrick's *Under the British Umbrella* (Scribner, pp. xv, 358, $2.75). Both are written for the layman, but the professional political scientist will find them illuminating, providing as they do the reflections and interpretations of persons who have observed the course of events from points of advantage. Mr. Duff Cooper's volume is a collection of his speeches and articles relating to British diplomatic and political problems of the past few years, leading up to the Second World War. They are written with the vigorous and fearless style of a person of strong convictions, most of which have turned out to be well founded. They abound in warnings to the British people that Hitler's foreign policies could not go unchallenged without disastrous consequences, that the aggressions of Italy and Japan must be stopped, and that without conscription Great Britain would be helpless. Throughout the volume there are many criticisms of the British system of government, with suggestions for such reforms as would permit more decisive action in dealing with dictators. Miss Kirkpatrick's volume covers substantially the same period, giving the reactions of an American journalist to the events which led to war. Although she travelled widely on the Continent, most of her reporting

was from Great Britain, and it therefore follows that her book is written primarily with a British background. While friendly to the British, she is critical of their pre-war diplomacy, pointing to its vacillations and uncertainties. The early chapters of her book give some facts and opinions on the government, the press, and the people of Great Britain. There are also many observations, often accompanied with anecdotes, upon the character and personality of contemporary British statesmen. Perhaps the most interesting aspect of Miss Kirkpatrick's book is her account of public attitudes toward the recurring European crises of recent years and toward British foreign policies. Throughout she shows a familiarity with British life and an understanding of the interests and implications of British diplomacy.—NORMAN L. HILL.

Hans Kelsen's *Legal Technique in International Law; A Textual Critique of the League Covenant* (Geneva Research Center, pp. 178, $0.40) is one of the most important books written to date on the League of Nations. It is on the *must* list for all believers in the League or in any comparable organization. It is a paragraph by paragraph analysis, criticism, and revision of the Covenant. Professor Kelsen admits that the League's shortcomings have been due more to the lack of good-will of the interested parties than to insufficiency of principles or constitution. However, he rightly believes that the application of the Covenant could be facilitated and sabotage impeded "by depriving states of evil intent of the multiple subterfuges with which the technical defects of the statute supply them." The author proceeds by way of refined statutory construction and legal reasoning. While lawyers are accustomed to such procedure in matters of domestic law, Anglo-American students of international law have tended to avoid such practice in connection with treaties and conventions. Such persons will find this book hard sledding, but most instructive. Distinction is made between revision from a technical point of view and reform of political principles. In eschewing the latter, the author refrains from commenting on Arts. 16 and 19. However, in abolishing the concept and influence of the Allied and Associated Powers in Art. 4, the relationship of the League to the Versailles Treaty in Art. 5, and in changing the political bearing of Art. 21, the writer oversteps his line. Legal analysis turns up some interesting propositions. By Art. 1, the United States and Japan are now legally precluded from membership in the League, although by Art. 4 both "are permanent members of the Council" (pp. 35–37, 47). Germany, it is held, may re-enter the League at any time (pp. 36–37). Professor Kelsen is at his best in treating Arts. 10–15. To his theoretical reasoning is added the experience of the League in applying these articles. No student or statesman can afford to overlook the alterations he suggests. They are of vital import, although there may be dis-

agreement regarding content and form. Readers will be troubled by the long, involved sentences, by the constant repetition of the term "norm," and the almost universal reference to the Covenant as the "Statute" of the League. There are numerous misspellings and typographical errors. Otherwise, Dr. Albert E. Highley is to be commended for the translation. —NORMAN J. PADELFORD.

At a time when interest in and judgments upon the conflict in the Far East tend to be based upon emotional bias rather than upon intellectual appraisal of all available evidence, the appearance of two small volumes in the Institute of Pacific Relations Inquiry Series is most timely. In his *Australia's Interests and Policies in the Far East* (New York: Institute of Pacific Relations, pp. 212, $1.75), Jack Shepherd reviews the subject in its modern and contemporary aspects with clarity and effectiveness. The historical background is traced briefly to 1930. Then follow chapters on Australia and the Far East, 1930–35, 1936–37, the undeclared war of 1937–39 as a political struggle, and finally the economic aspects of the conflict. Outstanding among the conclusions presented is the statement (p. 195) that while Australia might, under given conditions, contribute to the solution of Japan's economic problems by making available a larger share of her market to Japanese goods, she will not willingly grant any territorial concessions, nor will she, unless she must bow to force, lower the barriers she has erected against Asiatic immigration and settlement. The book is well documented and particularly valuable in its digest of recent Australian politics, newspaper opinion, and economic trends in foreign trade. In his companion, but briefer, volume, *New Zealand's Interests and Policies in the Far East* (New York: Institute of Pacific Relations, pp. 131, $1.00), Ian F. G. Milner adopts a similar organization, and adds as appendices convenient statistical tables on New Zealand's trade with eastern Asia. Both studies suggest, where they do not specifically state, the emergence in the Australian and New Zealand mind of a more determined and independent attitude in foreign affairs since 1935. This has been particularly true in New Zealand, where governments have traditionally been content to follow faithfully the British government in almost all foreign problems. Both volumes may be recommended to those who desire a concise, scholarly introduction to the subjects treated.—PAUL H. CLYDE.

The United States has been the traditional champion of the principle that nationals should be extradited. It is not generally realized, however, that the operation of this principle is practically nullified by the fact that the extradition of American nationals to most countries has been rendered impossible through a narrow interpretation of the treaty provision that

"neither party shall be bound to deliver up its own citizens for extradition"—a provision found in some forty treaties now in force between the United States and other countries. The development of our extradition policy, and the approximation of American practice (as distinguished from principle) to that of Continental countries, is traced by Robert W. Rafuse in *The Extradition of Nationals* (Illinois Studies in the Social Sciences, Vol. XXIV, No. 2, pp. 163, $1.50). The Neidecker case (Valentine v. United States [1936], 229 U. S. 5), which confirmed the restrictive interpretation of the optional clause, is thoroughly analyzed in the first two chapters. A third chapter is devoted to the law and practice of Great Britain, which has placed an opposite interpretation upon optional clauses in extradition treaties. Discussions of French, Italian, German, Dutch, Belgian, Swiss, and Latin-American law follow. The studies of Continental practice are sketchy and rest almost wholly, it would seem from internal evidence, upon an examination of treaty provisions. It is apparent that most of the materials listed in the very incomplete bibliography have not been utilized. The chapter on Italy, for example, does not cite a single Italian treatise, although several are listed. That on Germany contains only six pages, ignores the rich literature of the subject, and takes no account whatever of developments which have grown out of the establishment of the Nazi régime. At most, this is only the sketch of a treatise upon the subject. The work would have been better balanced had it been confined to studies of the law and practice of the United States and Great Britain, which alone have been based upon adequate research. —Lawrence Preuss.

The resumption of the Anglo-French economic blockade against the German aggressor, after a lapse of twenty years, lends current interest to Albert E. Highley's doctoral dissertation, *The Actions of the States Members of the League of Nations in Application of Sanctions Against Italy, 1935–1936* (Université de Genève, pp. 251). This American writer concentrates his attention upon the technique of coördinating action among some fifty nations, analyzing: (1) the evolution of League opinion respecting sanctions, including the 1921 resolutions in elaboration of Article XVI; (2) the organization in 1935 of interstate coöperation through the Conference (Coördination Committee) and its system of sub-committees; (3) the technical and legal preparation and application of the sanctions proposals; and (4) selected questions including national legislation, exemptions, and the effect of the League's efforts at conciliation. (The two passages of the study last mentioned have been published as "The First Sanctions Experiment" in *Geneva Studies*, Vol. IX, No. 4, which is free from the numerous typographical errors of the fuller version.) Several significant conclusions emerge from the sometimes dreary and confusing

condensation of pertinent League publications, and of commentaries listed in the extensive bibliography. The Italian experience demonstrated that the technical problems of the detailed formulation and application of sanctions, even by many states, were rapidly and satisfactorily solved. The absence in many states of preliminary legislation did not seriously impede the sanctions effort. Nor did sanctions fail because of leakage through the embargoes, but because of the change in political equilibrium upon the remilitarization of the Rhineland. The failure to compensate sanctions collaborators for trade losses has seriously reduced enthusiasm for sanctions. The author concludes that a readiness to employ military sanctions may be requisite to the preservation of the international community, although he has not presented any findings on the comparative effectiveness of economic sanctions against Italy, Japan, and Germany.—H. SCHUYLER FOSTER, JR.

Now that Germany has again entered the path of conquest, Professor James T. Shotwell's *What Germany Forgot* (Macmillan Co., pp. vi, 152, $1.50) becomes even more valuable and timely as a critical analysis of the real cost of war. It is unfortunate that of all *der Fuehrer's* entourage only Herr Schacht should be interested or moved by the convincing interpretation presented therein. Dr. Shotwell's thesis is that Germany, by making the Treaty of Versailles the scapegoat for all her post-war political and economic ills, made the fundamental mistake of seeking liberation from the servitudes of a treaty rather than from the servitudes of war. As a result, the German people have permitted their Nazi leaders to throw Europe back into the maelstrom of war costs from which it has been struggling to escape ever since 1919. Yet this Treaty of Versailles in reality imposed no unbearable burden upon Germany. In spite of the financial and economic clauses, Germany at the end of the first decade was as well off as her conquerors. Foreign investors had paid in as much as she had paid out in reparations. But the real cost was the ravages made on the future life of the German people—ravages which kept alive the military tradition and brought about a new débâcle before the destruction of the last had been repaired. When it is realized that the World War of 1914–18 raised the British debt to more than ten times its pre-war limits and took a full half of the entire private fortune of France, the fruits of victory would seem to be exceedingly bitter even for the victors. Yet again the war drums have sounded and again civilization must face financial and moral bankruptcy. Will the world again permit Germany to forget?—GRAHAM H. STUART.

Few students of world problems will quarrel with the fundamental thesis of Francis B. Sayre as set forth in the series of three lectures (delivered at Westminster College) entitled *The Protection of American Ex-*

port Trade (University of Chicago Press, pp. xi, 93, $1.50). Debunking protectionism and deploring the maternal care traditionally bestowed upon our infant industries by a solicitous Uncle Sam, the writer insists that international trade is "as necessary to the economic health of the world as the circulation of blood to the body." In a clear, straightforward style, he reveals the value of exports to American economy, arguing all the while that trade is a two-way process. Hence—in view of the world depression and its accompanying epidemic of tariffs, quotas, contingents, and discriminations—the real need for the Administration's program of 1934. And here the author is perfectly at home as he explains the workings of the Trade Agreements Act, the careful study that has preceded the conclusion of each of the 21 (now 22) agreements, and the positive way in which they have stimulated recovery at home and abroad. Those familiar with Mr. Sayre's writings and lectures in the field will find little new material in this otherwise excellent summary. We wonder how long it will take to pound into the heads of the American public the elementary principle that we must also buy if we wish to sell our goods abroad. Certainly Mr. Sayre has done his share of pounding!—FRANCIS O. WILCOX.

Margaret Boveri's *Minaret and Pipe-Line* (Oxford University Press, pp. xvi, 400, $5.00) can perhaps best be described as a political travelogue. The historical and political threads are continuously broken with word pictures of places of interest and accounts of conversations with people along the route of the author's travels. In broad sweeping strokes, the author rushes through centuries of history in the first chapter, which suffers somewhat from dogmatic statements regarding certain historical movements about which we can hardly be as positive as the author would lead us to believe. Chapter II, on the religious and tribal divisions of the Near East, is a brief, but rather detailed, statement of the many different groups in that area. The remainder of the book is concerned with recent history, particularly the post-war era. In general, the author's story is better in its observations than in its historical background, which leans for the most part on well-known secondary sources. That which she has seen, however, she describes in a most interesting fashion, and, although there may be certain contradictions in various passages, as, for example, between the diversity and the unity of the Near East, that area is, in fact, an accumulation of contradictions, as the author points out in the beginning of the last chapter. The book suffers somewhat from its belated appearance in English. It was written in German in the autumn of 1938, and events into 1939 are included only in the Introduction. Up to the time of writing, the book presents a valuable survey of the Near Eastern picture for those unacquainted with the area. For the expert, it pulls together the recent threads in admirable fashion.—WILBUR W. WHITE.

The tragic fate of the small states of Europe and Africa in recent months has placed the question of union and international coöperation in a prominent place on the agenda of popular discussion. For this reason, *Essays in Pan-Americanism* (University of California Press, pp. 174, $2.00), by Joseph Byrne Lockey, is timely in spite of the fact that it is a collection of articles previously published from 1925 to the present. The volume is, of course, not a systematic, unified treatise on Pan-Americanism; but all of the eight usually unconnected articles can reasonably be regarded as having a bearing on the general theme. The treatment is generally judicious and scholarly, with a slight eulogistic fervor in evidence in the article on Bolívar. Included are such highly interesting subjects as the ill-fated diplomacy of the United States in the Central American Federation of 1824 to 1849, the strange plan for Latin-American consolidation and union presented by William Shaler to President Monroe in 1812, the varied intrigues of Toledo in Spanish America in the days of President Madison, and the rôle of James G. Blaine in the foundation of Pan-Americanism. The author finds Pan-Americanism a democratic policy almost the direct opposite of imperialism. "That Pan-Americanism was the choice of the United States rather than imperialism, is a fact of great moment to the independent states of this hemisphere, and it may prove ultimately to be of vast significance to the world at large."—ARNOLD J. LIEN.

The Institute of Pacific Relations has been publishing during the past few months a number of brochures on different phases of the Far Eastern situation. Kurt Bloch's *German Interests and Policies in the Far East* (International Secretariat, Institute of Pacific Relations, pp. xii, 75, $1.00) is one of these very informative studies. Many valuable data are offered on such questions as the German influence on China's military reorganization, German commercial relations with Northeastern as well as Southeastern Asia, and German shipping in the Pacific. There are also two introductory chapters on the pre-World War and post-World War interests, mainly economic, of Germany in the Far East. Not an unimportant contribution is the twenty-three tables on various aspects of German trade, interspersed throughout the text. Perhaps the absence of documentation for many of these tables, as well as for some of the statements presented as facts, weakens somewhat the scholarly significance of the study. It might also be pointed out that this little book is more an investigation into the scope and implications of German trade with the Far East than a general discussion such as the title implies. For the former, however, it is a very readable and useful source of information.—WILLIAM BALLIS.

From 1836 to 1845, the Republic of Texas maintained a precarious and turbulent independence. Its roughhewn frontier diplomacy brought it into constant conflict with its nearest and most interested neighbor. Ambitious and bumptious, the Texan Republic claimed parts of Arkansas, waged intermittent warfare with Mexico, failed to restrain her Indians from border raids, and flirted with the United States for annexation and with England for a loan to maintain her vanishing credit. The diplomatic documents which resulted from American contacts with Texan problems constitute the first two parts of the twelfth volume of William R. Manning's *Diplomatic Correspondence of the United States: Inter-American Affairs, 1831–1860* (XII, Texas and Venezuela. Documents 5679–6174. Washington, Carnegie Endowment for International Peace, pp. xxxiv, 858, $5.00). The documents reveal the extent of American fears that England would succeed in persuading Texas to abolish slavery. The second half of the volume contains routine correspondence between the United States and Venezuela, largely relating to claims of American citizens against Venezuela growing out of a controversy over the ownership of Aves Island. Routine, too, are documents relating to internal revolutions and the efforts of Spain to profit by local disturbances.—W. B. HESSELTINE.

The effects upon a codfish are, putatively, about the same whether caught by a Portuguese, Breton, Frenchman, Spaniard, Englishman, Nova Scotian, New Englander, or Newfoundlander. But the effects upon the economic entities in control of the cod fisheries, whether empires, colonies, or provinces, have been devious and diverse. In *The Cod Fisheries; A History of an International Economy* (Yale University Press, pp. xxii, 520, $3.50)—one of the studies in Canadian-American relations prepared under the Carnegie Endowment—Harold A. Innis traces these effects. A more competent economic historian could hardly have been chosen for the purpose, judging by his prior work on the fur trade in Canada and other aspects of Canadian economy. Starting with the ecology of the cod, Professor Innis reveals the dynamism of the cod fisheries through several centuries of national and international politics and changing economic systems. This is 'rock-bottom" history. The more we have of it the better.—HENRY REIFF.

POLITICAL THEORY AND MISCELLANEOUS

With *Freedom of Thought in the Old South* (Duke University Press, pp. xix, 343, $3.00), Professor Clement Eaton, of Lafayette College, won the centennial prize of $1,500 for a "scholarly manuscript in the field of social, literary, or artistic history of the United States." In view of the

fact that striking parallels are revealed in intolerance in the old South and in the world today, it is a very timely volume. In his opening chapter, the author shows that some of the outstanding aristocrats of the late eighteenth and early nineteenth centuries were men of very liberal views. Chief among these was Thomas Jefferson, who entertained advanced views on slavery, religion, and practically everything else. Then there was George Mason, who described slavery as a "slow poison contaminating the minds and morals of the slave-owners and constituting an infernal school of tyranny for future legislation." Other aristocrats who belonged to the liberal school of thought were George Wythe, Henry Clay, Charles Carroll of Carrollton, William Pinkney, and Henry Laurens. The able president of South Carolina College, Dr. Thomas Cooper, boldly championed free discussion, even going so far as to attack certain commonly held notions about the Bible. However, the author shows that with the passing of Jefferson and the rise to power of Andrew Jackson there was a rising tide of intolerance. This is attributed partly to the enfranchisement of the ignorant and uneducated. But it has an economic basis also; namely, the rise of cotton capitalism. Slavery becomes a four-billion-dollar institution, and laws are enacted by the various states for the protection of this property—laws curbing free speech, etc. The author points out that in spite of the fact that most Southerners defended the institution of slavery, many thinkers boldly attacked it. Notable among these were Hinton R. Helper, who showed in the *Impending Crisis* that slavery was economically unsound, and James Coles Bruce of Virginia, who took essentially the same position. Slave insurrections aggravated the situation, and the ingress of agitators from the North irritated the Southerners. Finally an "intellectual blockade" was set up against abolitionism and certain "isms." The book is a good study in public opinion, and should be of considerable value to political scientists. Its principal defects arise from the author's proneness to wander from his subject.—CULLEN B. GOSNELL.

Morris L. Ernst and Alexander Lindey's *The Censor Marches On* (Doubleday, Doran and Co., pp. xi, 346, $2.50) adds nothing new or startling to the literature of political science. It is largely a rehash—brought up to date by the addition of such instances of suppression as have occurred since the last compilation was made—of incidents which have stirred liberal-minded persons for a number of years past. But the earnestness with which the authors attack their subject and the mass of evidence which they marshal in support of their case make the book interesting and even fascinating reading. Ernst and Lindey treat their subject-matter in orthodox fashion, taking each of the major media of expression in turn and recounting the difficulties it has faced when con-

fronted by the "Pecksniffs and Grundys" of contemporary society. Books, the theater, the movies, the radio, and the arts—each has had its tangles with an Anthony Comstock, the postal authorities, the local mayor, or some other person officially or unofficially bent on saving society from its own excesses. The most provocative sections of the book are the chapters devoted to "The Case Against Censorship," wherein the whole jumble of inconsistency, confusion, and contradiction which characterizes our various restrictive laws is laid bare. For this situation the authors have no single or simple solution. Several specific dislocations, as, for example, the secrecy which surrounds the records of state movie censorship boards, are mentioned as needing immediate attention; and even the dubious doctrine of nullification of obnoxious laws is suggested. But the final rampart is, as before, "eternal vigilance."—STUART H. VAN DYKE.

A number of years ago, Theodore Roosevelt wrote to Henry Cabot Lodge: "It is something to have written *the* life of Washington." Another attempt to do this has been made by N. W. Stephenson and W. H. Dunn in *George Washington* (Oxford University Press, 2 vols., pp. 1069, $10.00). This is a real contribution to the literature on George Washington. Many men from Washington Irving to Rupert Hughes have written biographies of Washington, but this is certainly one of the best. It represents twenty-five years of study and research. Professor Stephenson, of Scripps College, wrote the entire first volume and the first nine chapters of the second. Professor Dunn, also of Scripps, wrote the last seven chapters of the second volume and edited Professor Stephenson's manuscript. It is an ambitious work, and at the back there are one hundred and thirty pages of valuable notes. One of the finest interpretations of Washington is Woodrow Wilson's speech at Mt. Vernon, July 4, 1918. This book calls to mind that speech. The authors are a little hard on Washington's contemporaries, particularly Franklin and Jefferson. The amount of space given to the eight years of Washington's presidency at Philadelphia is inadequate. There is no evidence that the authors have used the priceless collection of letters of the military and political figures on both sides of the American Revolution in the Clements Library at Ann Arbor. The work is an example of good book-making and fine writing. Running through it like a golden thread is a knowledge of literature and a sense of nature. It should be required reading for every college senior.—PAUL M. CUNCANNON.

The need for administrative machinery if a policy of planning is to succeed is the theme of Lawrence A. Harper's *The English Navigation Laws: A Seventeenth-Century Experiment in Social Engineering* (Columbia University Press, pp. 503, $3.75). This well-written, well-arranged, and

well-digested history is a careful study of means as well as ends, and results as well as intentions. Concentrating on the period 1651–96, it throws much light on administrative legislation and adjudication; the use of the suspending, dispensing, and pardoning powers; the incompatibility of customs-farming with frequent changes in customs regulations; exchequer jurisdiction in England and admiralty jurisdiction in the colonies; the responsibility of colonial governors for law enforcement; and the organization of the customs service. It attributes this restrictionist legislation to the lobbying of the chartered trading corporations. By careful measurement of results, it shows the influence of these restrictions on imperial development. And, like Hecksher's monumental volumes, it illustrates the revived interest in mercantilism that is characteristic of our time.—W. H. WICKWAR.

In Britain and the Bulgarian Horrors of 1876 (University of Chicago Press, pp. 437, $2.00), David Harris, of Stanford University, gives a detailed study of the reaction of the British government and people to the well-known Turkish atrocities. The successive chapters tell the story of the development of Bulgarian nationality, of the hesitancy of the British agents and leaders at home and in Turkey to believe the stories emanating from Bulgaria, the slow awakening of the British public to a realization of what had happened, the government's defense of its policy, and the final transfer of public attention from the Bulgarian horrors to the supposed threat of Russia to traditional British interests. The author has performed the task which he set for himself in a most competent manner.—C. P. HIGBY.

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